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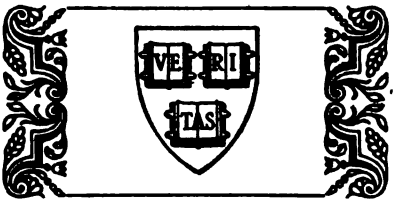

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THE

WORKS

OF

CHARLES SUMNER.

Veniet fortasse aliud tempus, dignius nostro, quo, debellatis odiis, veritas triumphabit. Hoc mecum opta, lector, et vale.

LEIBNITZ.

VOL. III.

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WELCOME TO KOSSUTH.

SPEECH IN THE SENATE, DECEMBER 10, 1851.

MR. SUMNER'S credentials as Senator were presented at the opening of the 32d Congress, December 1, 1851, when he took the oath of office. Among those who took the oath on the same day were Hon. Benjamin F. Wade, of Ohio, Hon. Hamilton Fish, of New York, and Hon. Stephen R. Mallory, of Florida, afterward Secretary of the Navy in the Rebel Government. The seat of the last was contested, and the question on his reception drew forth Mr. Clay, who was present for the last time in the Senate. Though living till June, he never again appeared in the Chamber. On the arrangement of the Committees, Mr. Sumner found himself at the bottom of the Committee on Revolutionary Claims and the Committee on Roads and Canals.

On the first day of the session a joint resolution was announced by Mr. Foote, of Mississippi, providing for the reception and entertainment of Louis Kossuth, the recent head of the revolutionary government in Hungary. Governor Kossuth, having escaped from Hungary, had found refuge in Turkey, where he was received on board one of our ships of war. After an interesting visit in England, where he addressed large public audiences with singular power and eloquence, he arrived in New York. Interest in the cause which he so ably represented, and personal sympathy with the exile, quickened by his genius, found universal expression in the country; but there was a protracted debate in the Senate before the vote was taken.

The debate proceeded on a resolution introduced by Mr. Seward, December 8th, as follows: —

"*Resolved, &c.*, That the Congress of the United States, in the name and behalf of the people of the United States, give to Louis Kossuth a cordial welcome to the capital and to the country; and that a copy of this resolution be transmitted to him by the President of the United States."

On the same day, Mr. Shields, of Illinois, introduced a resolution in the following terms: —

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"*Resolved*, That a committee of three be appointed by the Chair to wait on Louis Kossuth, Governor of Hungary, and introduce him to the Senate."

December 9th, Mr. Berrien, of Georgia, addressed the Senate at length in opposition to action by Congress, and, in closing his speech, moved the following amendment: —

"*And be it further Resolved*, That the welcome thus afforded to Louis Kossuth be extended to his associates who have landed on our shores; but while welcoming these Hungarian patriots to an asylum in our country, and to the protection which our laws do and always will afford to them, it is due to candor to declare that it is not the purpose of Congress to depart from the settled policy of this Government, which forbids all interference with the domestic concerns of other nations."

The final question was not reached till December 12th, when the amendment of Mr. Berrien was rejected: yeas 15, nays 26. The question then recurred on the resolution of Mr. Seward, which was adopted: yeas 33, nays 6. The resolution passed the House of Representatives, and was signed by the President.

On the 10th of December Mr. Sumner spoke. It was his first speech in the Senate. He rose to speak late in the afternoon of the day before, but gave way to an adjournment, which was moved by Mr. Rusk, of Texas. The next day, on motion of Mr. Seward, the Senate proceeded to the consideration of the resolution, when Mr. Sumner took the floor.

The following characteristic letter from Mr. Choate, one of his predecessors as Senator from Massachusetts, illustrates the reception of the speech in the country, besides being a souvenir of friendly relations amidst political differences.

"BOSTON, December 29, 1851.

"MY DEAR MR. SUMNER, —

"I thank you for the copy of your beautiful speech, and for the making of it. All men say it was a successful one, parliamentarily expressing it; and I am sure it is sound and safe, steering skilfully between *cold-shoulderism* and *inhospitality*, on the one side, and the splendid folly and wickedness of coöperation, on the other. Cover the Magyar with flowers, lave him with perfumes, serenade him with eloquence, and let him go home *alone*, — if he will not live here. Such is all that is permitted to wise states, aspiring to the 'True Grandeur.'

"I wish to Heaven you would write me *de rebus Congressus*. How does the Senate strike you? The best place this day on earth for reasoned and thoughtful, yet stimulant public speech. Think of that.

"Most truly yours — *in the Union*, —

"RUFUS CHOATE."

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MR. PRESIDENT, — Words are sometimes things; and I cannot disguise from myself that the resolution in honor of Louis Kossuth now pending before the Senate, when finally passed, will be an act of no small significance in the history of our country. The Senator from Georgia [Mr. BERRIEN] was right, when he said that it was no unmeaning compliment. Beyond its immediate welcome to an illustrious stranger, it will help to combine and direct the sentiments of our own people everywhere; it will inspire all in other lands who are engaged in the contest for freedom; it will challenge the disturbed attention of despots; and will become a precedent, whose importance will grow, in the thick-coming events of the future, with the growing might of the Republic. Therefore it becomes us to consider well what we do, and to understand the grounds of our conduct.

I am prepared to vote for it without amendment or condition of any kind, and on reasons which seem to me at once obvious and conclusive. In assigning these I shall be brief; and let me say, that, novice as I am in this hall, and, indeed, in all legislative halls, nothing but my strong interest in the question as now presented, and a hope to say something directly upon it, could prompt me thus early to mingle in these debates.

The case seems to require a statement, rather than an argument. As I understand, the last Congress requested the President to authorize the employment of a national vessel to receive and convey Louis Kossuth to the United States. That honorable service was performed, under the express direction of the President, and in pur-

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suance of the vote of Congress, by one of the best appointed ships of our navy, — the steam-frigate Mississippi. Far away from our country, in foreign waters, on the current of the Bosphorus, the Hungarian chief, passing from his Turkish exile, first pressed the deck of this gallant vessel, first came under the protection of our national flag, and for the first time in his life rested beneath the ensign of an unquestioned Republic. From that moment he became our guest. The Republic — which thus far he had seen only in delighted dream or vision — was now his host; and though this relation was interrupted for a few weeks by his wise and brilliant visit to England, yet its duties and its pleasures, as I confidently submit, are not yet ended. The liberated exile is now at our gates. Sir, we cannot do things by halves; and the hospitality, which, under the auspices of Congress, was thus begun, must, under the auspices of Congress, be continued. The hearts of the people are already open to receive him; Congress cannot turn its back upon him.

I would join in this welcome, not merely because it is essential to complete and crown the work of the last Congress, but because our guest deserves it. The distinction is great, I know; but it is not so great as his deserts. He deserves it as the early, constant, and incorruptible champion of the Liberal Cause in Hungary, who, while yet young, with unconscious power, girded himself for the contest, and by a series of masterly labors, with voice and pen, in parliamentary debate and in the discussions of the press, breathed into his country the breath of life. He deserves it by the great principles of true democracy which he caused to be recognized, — representation of the people without distinction of

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rank or birth, and *Equality before the law.*[1] He deserves it by the trials he has undergone, in prison and in exile. He deserves it by the precious truth he now so eloquently proclaims, of the Fraternity of Nations.

As I regard his course, I am filled with reverence and awe. I see in him, more than in any other living man, the power which may be exerted by a single, earnest, honest soul in a noble cause. In himself he is more than a whole cabinet, more than a whole army. I watch him in Hungary, while, like Carnot in France, he "organizes victory"; I follow him in exile to distant Mahometan Turkey, and there find him, with only a scanty band, in weakness and confinement, still the dread of despots; I sympathize with him in his happy release; and now, as he comes more within the sphere of immediate observation, amazement fills us all in the contemplation of his career, while he proceeds from land to land, from city to city, and, with words of matchless power, seems at times the fiery sword of Freedom, and then the trumpet of resurrection to the Nations, —

"Tuba mirum spargens sonum."[2]

I know not how others are impressed; but I call to mind no incident in history, no event of peace or war, — certainly none of war, — more strongly calculated, better adapted, to touch and exalt the imagination and the heart than his recent visit to England. He landed on the southern coast, not far from where William of Normandy, nearly eight centuries ago, had landed, — not far from where, nineteen centuries ago, Julius Cæsar had landed also; but William on the field of Hastings, and Cæsar in his adventurous expedition, made no conquest

[1] This important phrase is thus early introduced.
[2] Dies Iræ, st. 3.

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comparable in grandeur to that achieved by the unarmed and unattended Hungarian. A multitudinous people, outnumbering far the armies of those earlier times, was subdued by his wisdom and eloquence; and this exile, proceeding from place to place, traversing the country, at last, in the very heart of the Kingdom, threw down the gauntlet of the Republic. Without equivocation, amidst the supporters of monarchy, in the shadow of a lofty throne, he proclaimed himself a republican, and proclaimed the republic as his cherished aspiration for Hungary. And yet, amidst the excitements of this unparalleled scene, with that discretion which I pray may ever attend him as a good angel, — the ancient poet aptly tells us that no Divinity is absent where Prudence is present,[1] — he forbore all suggestion of interference with the institutions of the country whose guest he was, recognizing that vital principle of self-government by which every state chooses for itself the institutions and rulers it prefers.

Such a character, thus grandly historic, — a living Wallace, a living Tell, I had almost said a living Washington, — deserves our homage. Nor am I tempted to ask if there be any precedent for the resolution now under consideration. There is a time for all things; and the time has come for us to make a precedent in harmony with his unprecedented career. The occasion is fit; the hero is near; let us speak our welcome. It is true, that, unlike Lafayette, he has never directly served our country; but I cannot admit that on this account he is less worthy. Like Lafayette, he perilled life and all; like Lafayette, he did penance in an Austrian dungeon; like Lafayette, he served the cause of Free-

[1] "Nullum numen abest, si sit Prudentia." — JUVENAL, *Sat.* X. 365.

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dom; and whosoever serves this cause, wheresoever he may be, in whatever land, is entitled, according to his works, to the gratitude of every true American bosom, of every true lover of mankind.

The resolution before us commends itself by simplicity and completeness. In this respect it seems preferable to that of the Senator from Illinois [Mr. SHIELDS]; nor is it obnoxious to objections urged against that of the Senator from Mississippi [Mr. FOOTE]; and I do not see that it can give any just umbrage, in our diplomatic relations, even to the sensitive representative of the House of Austria. Though we have the high authority of the President, in his Message, for styling our guest "Governor," — a title which seems to imply the *de facto* independence of Hungary, when it is known that our Government declined to acknowledge it, — the resolution avoids this difficulty, and speaks of him without title of any kind, — simply as a private citizen. As such, it offers him welcome to the capital and to the country.

The Comity of Nations I respect. To the behests of the Law of Nations I profoundly bow. In our domestic affairs all acts are brought to the Constitution, as to a touchstone; so in our foreign affairs all acts are brought to the touchstone of the Law of Nations, — that supreme law, the world's collected will, which overarches the Grand Commonwealth of Christian States. What that forbids I forbear to do. But no text of this voluminous code, no commentary, no gloss, can be found, which forbids us to welcome any exile of Freedom.

Looking at this resolution in its various lights, as a carrying out of the act of the last Congress, as justly due to the exalted character of our guest, and as proper

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in form and consistent with the Law of Nations, it seems impossible to avoid the conclusion in its favor. On its merits it would naturally be adopted. And here I might stop.

An appeal is made against the resolution on grounds which seem to me extraneous and irrelevant. There is an attempt to involve it with the critical question of intervention by our country in European affairs; and recent speeches in England and New York are adduced to show that such intervention is sought by our guest. It is sufficient to say, in reply to this suggestion, introduced by the Senator from Georgia [Mr. BERRIEN] with a skill which all might envy, and adopted by the Senator from New Jersey [Mr. MILLER], *that no such intervention is promised or implied by the resolution.* It does not appear on the face of the resolution; it is not in any way suggested by the resolution, directly or indirectly. It can be found only in the imagination, the anxieties, or the fears of Senators. It is a mere ghost, and not a reality. As such we may dismiss it. But I feel strongly on this point, and desire to go further. Here, again, I shall be brief; for the occasion allows me to give conclusions only, and not details.

While thus warmly, with my heart in my hand, joining in this tribute, I wish to be understood as in no respect encouraging any idea of belligerent intervention in European affairs. Such a system would have in it no element of just self-defence, and would open vials of perplexities and ills which I trust our country will never be called to affront. I inculcate no frigid isolation. God forbid that we should ever close our ears to the cry of distress, or cease to swell with indignation at the steps of tyranny! In the wisdom of Washington we find

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perpetual counsel. Like Washington, in his eloquent words to the Minister of the French Directory, I would offer sympathy and God-speed to all, in every land, who struggle for Human Rights; but, sternly as Washington on another occasion, against every pressure, against all popular appeals, against all solicitations, against all blandishments, I would uphold with steady hand the peaceful neutrality of the country. Could I now approach our mighty guest, I would say to him, with the respectful frankness of a friend: "Be content with the outgushing sympathy which you now inspire everywhere throughout this wide-spread land, and may it strengthen your soul! Trust in God, in the inspiration of your cause, and in the Great Future, pregnant with freedom for all mankind. But respect our ideas, as we respect yours. Do not seek to reverse our traditional, established policy of peace. *Do not, under the too plausible sophism of upholding non-intervention, provoke American intervention on distant European soil.* Leave us to tread where Washington points the way."

And yet, with these convictions, Mr. President, which I now most sincerely express, I trust the Senator from Georgia [Mr. BERRIEN] will pardon me when I say I cannot join in his proposed amendment,—and for this specific reason. To an act of courtesy and welcome it attaches a condition, which, however just as an independent proposition, is most ungracious in such connection. It is out of place, and everything out of place is to a certain extent offensive. If adopted, it would impair, if not destroy, the value of our act. A generous hospitality will not make terms or conditions with a guest; and such hospitality I trust Congress will tender to Louis Kossuth.

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OUR COUNTRY ON THE SIDE OF FREEDOM,
WITHOUT BELLIGERENT INTERVENTION.

LETTER TO A PHILADELPHIA COMMITTEE, DECEMBER 23, 1851.

WHEN this letter was written, Kossuth was engaged in the effort to enlist our country in active measures for the liberation of Hungary.

WASHINGTON, December 23, 1851.

DEAR SIR, — It is not in my power to unite with the citizens of Philadelphia in their banquet to Governor Kossuth. But though not present in person, my heart will be with them in every word of honor to that illustrious man, in every assurance of sympathy for his great cause, and in every practical effort to place our country openly on the side of Freedom.

Among citizens all violence is forbidden by the Municipal Law, which is enforced by no private arm, but by the sheriff, in the name of the Government, and under the sanctions of the magistrate. So, among the Nations, all violence, and especially all belligerent intervention, should be forbidden by International Law; and I trust the day is not far distant when this prohibition will be maintained by the Federation of Christian States, with an *executive power* too mighty for any contumacious resistance.

I have the honor to be, Gentlemen,

Your faithful servant,

CHARLES SUMNER.

TO THE COMMITTEE.

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CLEMENCY TO POLITICAL OFFENDERS.

LETTER TO AN IRISH FESTIVAL AT WASHINGTON, JANUARY 22, 1852.

AT the festival the following toast was given: "*Hon. Charles Sumner:* In the Cradle of Liberty the cause of the exile will ever find a friend."

The following letter was then read.

WASHINGTON, January 22, 1852.

GENTLEMEN, — It is not in my power to unite in your festal meeting this evening. But be assured I shall rejoice in every word of affection and honor for Ireland, and of sympathy with all her children, especially those patriots who have striven and suffered for the common good.

In answer to your express request, I beg leave to inclose a sentiment, which I trust may find a response at once from our own Government and from that of Great Britain.

I have the honor to be, Gentlemen,
Your faithful servant,
CHARLES SUMNER.

JOHN T. TOWERS, Esq., Chairman, &c.

Clemency: A grace which it can never be otherwise than honorable to ask and honorable to grant.

"'T is mightiest in the mightiest; it becomes
The thronèd monarch better than his crown."

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JUSTICE TO THE LAND STATES, AND POLICY OF ROADS.

SPEECHES IN THE SENATE ON THE IOWA RAILROAD BILL, JANUARY 27, FEBRUARY 17, AND MARCH 16, 1852.

THE Senate having under consideration the "bill granting the right of way, and making a grant of land to the State of Iowa, in aid of the construction of certain railroads in said State," Mr. Sumner entered into the debate, speaking several times. His remarks were much noticed at the time in the Senate, and also in the country, especially in the West. At home in Massachusetts political opponents seized the occasion for criticism, and resolutions on the subject were introduced into the Legislature of Massachusetts. He spoke first January 27, 1852, as follows.

MR. PRESIDENT,—This bill is important by itself, inasmuch as it promises to secure the building of a railroad, at large cost, for a long distance, through a country not thickly settled, in a remote corner of the land. It is more important still as a precedent for a series of similar appropriations in other States. In this discussion, then, we have before us, at the same time, the special interests of the State of Iowa, traversed by this projected road, and also the great question of the public lands.

I have no inclination to enter into these matters at length, even if I were able; but entertaining no doubt as to the requirements of policy and of justice in the present case, and in all like cases,—seeing my way clearly

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before me by lights that cannot deceive, — I hope in a few words to exhibit these requirements and to make this way manifest to others. I am especially moved to do so by the tone of remark often heard out of the Senate, and sometimes even here, begrudging these appropriations, and charging particular States for which they are made with undue absorption of the national property. It is sometimes said — not in this body, I know — that "the West is stealing the public lands"; and the Senator from Virginia [Mr. HUNTER], who expresses himself with frankness and moderation worthy of regard, in discussing this very measure, distinctly says that "we are squandering away the public lands"; and he complains that such appropriations are partial, "because very large amounts of land are distributed to those States in which they lie, while nothing is given to the old States." And the Senator from Kentucky [Mr. UNDERWOOD], taking up this strain, dwells at great length, and in every variety of expression, on the alleged partiality of the distribution.

Now I know full well that the States in which these lands lie need no defender like myself. But, as a Senator from one of the old States, I desire thus early to declare my dissent from these views, and the reasons for this dissent. Beyond a general concern that the public lands, of which the Union is now almoner, custodian, and proprietor, should be administered freely, generously, bountifully, in such wise as most to promote their settlement, and to build upon them towns, cities, and States, the nurseries of future empire, — beyond this concern, which leads me gladly to adopt the proposition in favor of actual settlers brought forward by the Senator from Wisconsin [Mr. WALKER], I find

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clear and special reason for supporting the measure before the Senate in an undeniable rule of justice to the States in which the lands lie.

Let me speak, then, for *justice* to the Land States. And in doing so I wish to present an important, and, as it seems to me, decisive consideration, — not adduced thus far in this debate, nor do I know that it has been argued in any former discussion, — *founded on the exemption from taxation enjoyed by the national lands in the several States, and the unquestionable value of this franchise.* The subject naturally presents itself under two heads: *first,* the origin and nature of this franchise; and, *secondly,* its extent and value, after deducting all reservations and grants to the several States.

I. In the *first* place, as to the origin and nature of the immunity enjoyed by the national domain in the several States.

The United States are proprietors of large tracts within the municipal and legislative jurisdiction of States, not held directly by virtue of any original prerogative or eminent domain, by any right of conquest, occupancy, or discovery, but under acts of cession from the old States, in which the lands were situated, and from foreign countries, recognized and confirmed in the statutes by which the different States have been constituted. Words determining this relation are found in the Ordinance of 1787, as follows: "The Legislatures of those districts or new States shall never interfere with *the primary disposal of the soil* by the United States in Congress assembled, nor with any regulations Congress may find necessary for securing the title in such soil to the *bona fide* purchasers." This provision is incorporated,

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as an article of compact, in subsequent statutes under which the new States took their place in the Union. It is "the primary disposal of the soil," without any incident of *sovereignty*, which is here secured.

Regarding the United States, then, as simple proprietors, under the jurisdiction of the States, would they not be liable, in the discretion of the States, to the burdens of other proprietors, unless specially exempted? This exemption is conceded. In the Ordinance of 1787 it is expressly declared that "no tax shall be imposed on lands the property of the United States"; and this provision, like that already mentioned, was embodied in succeeding Acts of Congress by which new States were constituted. The fact that it was formally conceded and has been thus embodied seems to denote that such concession was regarded as necessary to secure the desired immunity. Indeed, from familiar principles of our jurisprudence, recognized by the Supreme Court, it is reasonable to infer, that, without such express exemption, this whole extent of territory would be within the field of local taxation, liable, like the lands of other proprietors, to all customary burdens and incidents.

Thus, in an early case of Pennsylvania, it is decided that the purchase of land by the United States would not alone be sufficient to vest them with the jurisdiction, or to oust the jurisdiction of the State, without being accompanied or followed by the consent of the Legislature of the State.[1] And it is judicially declared by the late Mr. Justice Woodbury, in a well-considered case:—

"Where the United States own land situated within the limits of particular States, and over which they have no

[1] See Commonwealth of Pennsylvania v. Young. 1 Kent's Com., 481.

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cession of jurisdiction, for objects either special or general, little doubt exists *that the rights and remedies in relation to it are usually such as apply to other land-owners within the State.*" [1]

After setting forth certain rights of the United States, the learned judge proceeds: —

"All these rights exist in the United States for constitutional purposes, and without a special cession of jurisdiction; though it is admitted that other powers over the property and persons on such lands will, of course, remain in the States, till such a cession is made. Nothing passes without such a cession, except what is an incident to the title and purpose of the General Government." [2]

The Supreme Court give great eminence to the sovereign right of taxation in the States, saying: —

"Taxation is a sacred right, essential to the existence of Government, — an incident of sovereignty. The right of legislation is coextensive with the incident, to attach it upon all persons and property within the jurisdiction of a State." [3]

And again, the Court say in another case: —

"However absolute the right of an individual may be, it is still in the nature of that right that it must bear a portion of the public burdens, and that portion must be determined by the Legislature." [4]

In the same case, the Court, after declaring "that the taxing power is of vital importance, — that it is essential to the existence of Government, — that the relinquish-

[1] United States *v.* Ames, 1 Woodbury and Minot, 80.
[2] Ibid., 83.
[3] Dobbins *v.* Commissioners of Erie Co., 16 Peters, 447.
[4] Providence Bank *v.* Billings and Pittman, 4 Peters, 563.

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ment of such a power is never to be assumed," add, cautiously, that they "will not say that a State may not relinquish it, — *that a consideration sufficiently valuable to induce a partial release of it may not exist.*"[1]

While thus upholding the right of taxation as one of the precious attributes belonging to the States, the Court, under the Constitution of the United States, properly exempt instruments and means of government; but they limit the exemption to these instruments and means. Thus it is expressly decided in a celebrated case,[2] that, while the Bank of the United States, being one of the necessary *instruments and means* to execute the sovereign powers of the nation, is not liable to taxation, yet the real property of the Bank is thus liable, in common with other real property in a particular State.

Now the lands held by the United States do not belong to *instruments and means* necessary and proper to execute the sovereign powers of the nation. In this respect they clearly differ from fortifications, arsenals, and navy-yards. They are strictly in the nature of *private property* belonging to the nation and situated within the jurisdiction of States. In excusing them from taxation, our fathers acted unquestionably according to the suggestions of prudence, but also under the influence of precedent, derived *at that time* from the prerogatives of the British Crown. It was an early prerogative, transmitted from feudal days, when all taxes were in the nature of aids and subsidies to the monarch, that the property of the Crown, of every nature, should be exempt from taxation. *But mark the change.* This ancient

[1] Providence Bank *v.* Billings and Pittman, 4 Peters, 561.
[2] McCulloch *v.* The State of Maryland, 4 Wheaton, 316.

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feudal principle is not now the law of England. By the statute of 39 and 40 George III., chap. 88, passed thirteen years after the Ordinance of 1787, the lands and tenements purchased by the Crown out of the privy purse or other moneys not appropriated to any public service, or which came to the King from his ancestors or private persons, — in other words, lands and tenements in the nature of *private property*, — are subjected to taxation even while they belong to the Crown.

Thus the matter stands. Lands belonging to the nation, which, it seems, even royal prerogative at this day in England cannot save from taxation, are in our country, under express provisions of compact, early established, exempted from this burden. Now, Sir, I make no complaint; I do not suggest any change, nor do I hint any ground of legal title in the States. But I do confidently submit, that in this peculiar, time-honored immunity, originally claimed by the nation, and conceded by the States within which the public lands lie, there is ample ground of equity, under which these States may now appeal to the nation for assistance out of these public lands.

When I listen to comparisons discrediting these States by the side of the old States, when I hear it charged that they are constant recipients of the national bounty, and when I catch those sharper terms of condemnation by which they are characterized as "plunderers" and "robbers" and "pirates," I am forced to inquire whether the nation has not already received from these States something more than it has ever bestowed, even in its most liberal moods, — whether, at this moment, the nation is not *equitably* debtor to these States, and not these States debtors to the nation.

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II. I am now brought to the *second* head of this inquiry, — that is, the extent and value of the immunity from taxation, after deducting all reservations and grants to the several States. Authentic documents and facts place these beyond question.

From the official returns of the Land Office in January, 1849,[1] it appears that the areas of the twelve Land States — Ohio, Indiana, Illinois, Missouri, Alabama, Mississippi, Louisiana, Michigan, Arkansas, Wisconsin, Iowa, and Florida — embrace 392,579,200 acres. California was not at that time a State of the Union. Of this territory, only 289,961,954 acres had been, in pursuance of the laws of the United States, surveyed, proclaimed, and put into the market. In some of the recent States, more than a moiety of the whole domain had never been brought into this condition. At the date of these official returns it continued still unconscious of the surveyor's chain. Thus, in Wisconsin, out of more than thirty-four millions of acres, only a little more than thirteen millions were proclaimed for sale; and in Iowa, the very State whose interests are now particularly in question, out of more than thirty-two millions of acres, only a little more than twelve millions were proclaimed for sale. I cannot doubt that in fact the aggregate of the public lands within the States at all times much exceeds the amount actually in the market; but since it may be said that lands not yet surveyed, proclaimed, and put into the market, though nominally under the jurisdiction of the State, must lie actually beyond the sphere of its influence, so as not to derive any appreciable advantage from the local government, and as I desire to hold this argument above every im-

[1] Exec. Doc., 30th Cong. 2d Sess., H. R. No. 12, Table 6 p. 255.

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putation of exaggeration, — knowing full well that it can afford to be understated, — I forbear to take the larger amount as basis, but found my estimates upon the extent of territory actually proclaimed for sale, from the beginning down to January, 1849, amounting to 289,961,954 acres.

All these lands thus proclaimed have been exempt from taxation. But since they were proclaimed at different periods, and also sold at different periods, so far as they are sold, it is necessary, in arriving at the value of this immunity, to ascertain what is the average period during which the lands, after being put into the market, are in the possession of the United States. This we are able to do from official returns of the Land Office. Here is a table now before me, from which it appears, that, of the lands offered for sale during a period of thirty years, large quantities were, at the expiration of the period, still on hand. Of the fourteen millions offered in Ohio during this period, more than two millions remained, while, of the nineteen millions offered in Missouri, more than twelve millions remained. Of all the lands offered during this period of *thirty* years, more than half were still unsold.[1] And out of the aggregate of 289,961,954 acres proclaimed from the beginning down to January, 1849, notwithstanding the advancing tread of our thick-coming population, only 100,209,656 acres had been sold.[2] Now, without further pursuing these details, I assume, what cannot be questioned, as it is most clearly within the truth, that lands proclaimed are not all sold till after a period of fifty years. This estimate makes the average period during which the

[1] Exec. Doc., 30th Cong. 2d Sess., H. R. No. 12, Table 2, p. 210.
[2] Ibid., Table 6, p. 255.

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lands, after being surveyed and proclaimed, are actually in the possession of the United States, and free from taxation, twenty-five years.

According to this estimate, 289,961,954 acres, proclaimed for sale, have been absolutely free from taxation during the space of twenty-five years; and yet, during this whole period, they have, without the ordinary consideration, enjoyed the protection of the State, with advantages and increased value from highways, bridges, and school-houses, all of which are supported by the adjoining proprietors, under the laws of the State, without assistance of any kind from the United States.

Such is the extent of this immunity. But, in order to determine its precise value, it is necessary to advance a step farther, and ascertain one other element: that is, the average annual tax on land in these States,—for instance, on the land of other non-residents. There are no official documents within my knowledge by which this can be determined. But, after inquiry of gentlemen, themselves landholders in these States, I have thought it might be placed, without risk of contradiction, at one cent an acre. Probably it is rather two, or even three cents; but, desiring to keep within bounds, I call it only one cent an acre. The annual tax on 289,961,954 acres, at the rate of one cent an acre, would be $2,899,619, and the sum-total of this tax for twenty-five years would amount to $72,490,475, being the apparent value of this immunity from taxation already enjoyed by the United States; or, if we call the annual tax two cents an acre, instead of one cent, we have nothing less than $144,980,950, of which the United States may now be regarded as trustees in *equity* for the benefit of the Land States.

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Against this large sum I may be reminded of reservations and grants by the nation to the different States. These, when examined, do not materially interfere with the result. From the official returns of the Land Office, January, 1849,[1] we learn the precise extent of these reservations and grants down to that period. Here is the exhibit:—

	Acres.
Common Schools	10,807,958
Universities	823,950
Seat of Government	50,860
Salines	422,325
Deaf and Dumb Asylums	45,440
Internal Improvements	8,474,473
	20,625,006

This is all. In the whole aggregate only a little more than twenty millions of acres have been granted to these States. The value of this sum-total, if deducted from the estimated value of the franchise enjoyed by the nation, will still leave a very large balance to the credit of the Land States. Estimating the land at $1.25 an acre, all the reservations and grants will amount to no more than $25,781,257. Deducting this sum from $72,490,475, we have $46,709,218 to the credit of the Land States; or, if we place the tax at two cents an acre, more than double this sum.

This result leaves the nation so largely in debt to the Land States that it becomes of small importance to scan closely the character of these grants and reservations, to determine whether in large part they are not already satisfied by specific considerations on the part of the States. But the stress, which, in the course of this de-

[1] Exec. Doc., 30th Cong. 2d Sess., H. R. No. 12, Table 10, p. 260.

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bate, is laid upon this bounty, leads me to go further. From an examination of the Acts of Congress by which the Land States were admitted into the Union it appears that a large portion of these reservations and grants was made on the express condition that the lands sold by the United States, under the jurisdiction of the States, *should remain exempt from any State tax for the space of five years after the sale.* This condition is particularly applicable to the appropriations for common schools, universities, seats of government, and salines, amounting to 12,105,093 acres. It is also particularly applicable to another item, not mentioned before, which is known as the five per cent fund, from the proceeds of the public lands, for the benefit of roads and canals, amounting in the whole to $5,242,069. These appropriations, being made on specific conditions, faithfully performed by the States down to this day, are properly excluded from our calculations. And this is an answer to the Senator from Kentucky [Mr. UNDERWOOD], who dwelt so energetically on these appropriations, without seeming to be aware of the conditions on which they were granted.

That I may make this more intelligible, let me refer to the act for the admission of Indiana. After setting forth the five reservations and grants already mentioned, it proceeds: —

"*And provided always,* That the five foregoing provisions herein offered are on the conditions that the convention of the said State shall provide by an ordinance, irrevocable without the consent of the United States, that every and each tract of land sold by the United States, from and after the first day of December next, shall be and remain exempt from any tax laid by order or under any authority of the

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State, whether for State, county, or township, or any other purpose whatever, for the term of five years from and after the day of sale."

This clause does not stand by itself in the acts admitting the more recent States, but is mixed with other conditions. I will not believe, however, that any discrimination can be made between particular Land States, on the ground of difference in conditions properly attributable to accidental circumstances. The provision just quoted is found substantially in the acts for the admission of Ohio, Missouri, Illinois, Alabama, Mississippi, and Arkansas. So far as these States are concerned, it is a complete consideration, in the nature of satisfaction, for reservations and grants enjoyed by them. It also helps to illustrate the value of the *permanent immunity* from taxation belonging to the United States, by exhibiting concessions made by the United States to assure this franchise for certain moderate quantities of land during the brief space of five years only.

After the constant charges of squandering the public lands and of partiality to the Land States, I think all will be astonished at the small amount on the debtor side, in the great account between the States and the Nation. This consists of grants for internal improvements, in the whole reaching to only 8,474,473 acres, which, at $1.25 an acre, will be $10,593,091. If this sum be deducted from the estimated value of the immunity already enjoyed by the United States, we shall still have *upwards of* $60,000,000 *surrendered by the Land States to the nation;* or, if we call the annual tax two cents an acre, more than double this sum.

In these estimates I group together all the Land States. But, taking separate States, we find the same

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proportionate result. For instance, there is Ohio, with 16,770,984 acres proclaimed for sale down to January 1, 1849. Adopting the basis already employed, and assuming that these lands continued in the possession of the United States an average period of twenty-five years after being surveyed and proclaimed, and that the land tax was one cent an acre, we have $4,192,746 as the value of the immunity from taxation already enjoyed by the United States in Ohio. From this may be deducted the value of 1,181,134 acres, being grants to this State for internal improvements, at $1.25 per acre, equal to $1,476,417, leaving upwards of two millions — nearly three millions — of dollars yielded by this State to the nation.

Take another State, — Missouri. It appears that down to January, 1849, 39,635,609 acres had been proclaimed for sale in this State. Assuming again the basis already employed, we have $9,908,902 as the value of the immunity from taxation already enjoyed by the United States in Missouri. From this may be deducted the value of 500,000 acres, granted for internal improvements, which, at $1.25 an acre, amounts to $625,000, leaving upwards of nine millions of dollars thus yielded by this State to the nation.

In this way I might proceed with all the Land States individually; but enough is done to repel the charges against them, and to elucidate a *peculiar equity*. On the one side, they have received little, very little, from the nation, — while, on the other side, the nation, by strong considerations of equity, is largely indebted to them. This obligation of itself constitutes an equitable fund, to which the Land States may properly resort for assistance in works of internal improvement; and

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Congress will show an indifference to reasonable demands, should it fail to deal with them munificently, — in some sort, according to the simple measure of advantage which the nation has already so largely enjoyed at their hands.

Against these clear and well-supported merits, the old States present small claims to consideration. They have waived no right of taxation over lands within their acknowledged jurisdiction; they have made no valuable concession; they have yielded up no costly franchise. It remains, then, that, with candor and justice, they should recognize the superior — I will not say exclusive — claims of the States within whose borders and under the protection of whose laws the national domain is found.

Thus much for what I have to say in favor of this bill, on the ground of *justice* to the States in which the lands lie. If this argument did not seem sufficiently conclusive to render any further discussion superfluous, at least from me, I might go forward, and show that the true interests of the whole country — of every State in the Union, as of Iowa itself — are happily coincident with this claim of justice.

The State of Iowa, though distant and still sparsely settled, is known to contain the materials of boundless prosperity. The northern part may wear some of the rigid features of New England, but the middle and southern portion has a surface of great fertility, and in its bosom coal to an incalculable amount, — more, it is supposed, than all to be found in England and the whole European Continent. With these remarkable capacities, which, however, it shares with Illinois and Indiana and

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with the northern part of Missouri, it will be able to subsist a large population and to support manufactories on the most extensive scale. Its fields will naturally wave with golden harvests, while its inexhaustible stores of coal will quicken every form of human industry, and will furnish an incalculable motive-power to all its multiplying machinery and workshops. If in the reports of Science, now authenticated by a careful and admirable geological survey of this region,[1] we may read the future development, I had almost said the destiny, of States, according to natural laws, which I believe, then it would be difficult to exaggerate what we may expect from Iowa.

But all resources will be vain and valueless without human intelligence, skill, and exertion. These will change the face of the country, opening forests, ploughing fields, working mines, building roads, establishing schools, planting churches, administering justice. To carry such blessings into every part of this new region is now an especial duty. Of course all who have property in this State, particularly all landholders, according to their means, must contribute to the improvements and institutions by which its welfare is advanced. This general principle seems to be clear. It is only when we come to its application that there can be any question.

It will be observed that here is no suggestion of legal right on the part of the Land States, or of legal obligation on the part of the nation. Nor is there any sug-

[1] Report of a Geological Survey of Wisconsin, Iowa, and Minnesota, and incidentally of a Portion of Nebraska Territory, made under Instructions from the United States Treasury Department, by David Dale Owen, United States Geologist. Philadelphia, 1852.

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gestion that our fathers, when by formal compact they placed this immunity beyond question, failed to act justly; nor again is there any suggestion that this immunity should be repealed. It is simply assumed as an existing fact, which has been of value to the nation, and therefore constitutes an equitable ground of obligation on the part of the nation in favor of the Land States. Lord Bacon defines equity as the "general conscience of the realm"; and it is to this "general conscience" of the republic that the parties interested in this obligation must look for its recognition.

And now the question is directly presented, whether the Great Landholder, persevering in this system, will leave to the small landholders by his side the further labor of building railroads, by which his own magnificent domain will be largely enhanced, without contribution thereto. The very statement of the question seems to be sufficient. Reason declares, with unhesitating voice, that, whatever may be the legal immunities of the Great Landholder, he cannot, in equity, be above his neighbors, and that he should contribute to these works in some proportion according to the extent of the benefit and the immunities enjoyed. To ascertain this proportion precisely may be difficult; but the obligation is clear and obvious.

It is on the ground of this obligation that the bill now before the Senate is most strongly commended. It is said, I know, that by the grant of alternate sections for the purpose of railroads the remaining sections are so far enhanced in value that the nation loses nothing by the grant, — so that it may enjoy the rare privilege of bestowing without losing, of squandering, if you please, without any diminution of its means. Though this

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consideration is not unimportant, yet I do not dwell upon it, because it is so entirely subordinate to that derived from the positive obligation of the Great Landholder on unanswerable grounds of justice. I say confidently on unanswerable grounds of justice, because nothing can render the rules of justice in such a case less obligatory upon the Government than upon a private individual. If the latter, according to all the laws of good neighborhood, would be bound to help such a work, then is the Government bound. To decline this duty, to shirk this obvious obligation, is to behave as no private citizen could behave without the imputation of meanness. Thus strongly may I put the case, without fear of contradiction.

The influence of roads and canals in enhancing the value of the public domain through which they pass is well illustrated by experience. Take the Illinois and Michigan Canal, for which alternate sections of land were granted by the United States. Many years ago, as I understand, all the reserved sections on this line were sold, while in other districts of Illinois, where there has been no similar improvement, large quantities of land still continue unsold. Indeed, of the whole national domain in Illinois, amounting to upwards of thirty-five millions of acres, only fifteen millions had been sold in January, 1849.[1]

Take another instance. The Chicago and Rock Island Railroad — of which one of the proposed roads in Iowa will be an extension — has given an impulse to sales throughout a wide region. The County of Henry, through which it passes, is one of the largest and least populous in Illinois. In this county the lands had

[1] Exec. Doc., 30th Cong. 2d Sess., H. R. No. 12, Table 6, p. 255.

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been in the market for nearly thirty years, and recent sales had not reached a thousand acres a year. But in the very year after this road was surveyed fifty thousand acres of public land were sold in this county, being more than all the land sold in the remainder of the district. Again, I am told, that, after the bill now pending passed the Senate, at the last Congress, public attention, in anticipation of the promised improvement, was attracted to the neighborhood of Davenport, the eastern terminus of the proposed road, and the public domain, not only at this place, but in the adjoining counties, at once found a market. Though the sales had already been considerable, they were in a single year more than doubled, amounting to upwards of eighty thousand acres.

It will readily occur to all that the whole country must gain by the increased value of the lands still retained and benefited by the proposed road. But this advantage, though not unimportant, is trivial by the side of the grander gains, commercial, political, social, and moral, which must accrue from the opening of a new communication, by which the territory beyond the Mississippi is brought into connection with the Atlantic seaboard, and the distant post of Council Bluffs becomes a suburb of Washington. It would be difficult to exaggerate the influence of roads as means of civilization. This, at least, may be said: Where roads are not, civilization cannot be; and civilization advances as roads are extended. By roads religion and knowledge are diffused,—intercourse of all kinds is promoted,—producer, manufacturer, and consumer are all brought nearer together,—commerce is quickened,—markets are created,—property, wherever touched by these lines, as by a

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magic rod, is changed into new values, — and the great current of travel, like that stream of classic fable, or one of the rivers in our own California, hurries in a channel of golden sand. The roads, together with the laws, of ancient Rome are now better remembered than her victories. The Flaminian and Appian Ways, once trod by such great destinies, still remain as beneficent representatives of ancient grandeur. Under God, the road and the schoolmaster are two chief agents of human improvement. The education begun by the schoolmaster is expanded, liberalized, and completed by intercourse with the world; and this intercourse finds new opportunities and inducements in every road that is built.

Our country has already been active in this work. Through a remarkable line of steam communications, chiefly by railroad, its whole population is now, or will be shortly, brought close to the borders of Iowa. Cities of the Southern seaboard, Charleston, Savannah, and Mobile, are already stretching their lines in this direction, soon to be completed conductors, — while the traveller from all the principal points of the Northern seaboard, from Portland, Boston, Providence, New York, Philadelphia, Baltimore, and Washington, now passes without impediment to this remote region, traversing a territory of unexampled resources, at once magazine and granary, the largest coal-field and at the same time the largest corn-field of the known globe, winding his way among churches and school-houses, among forests and gardens, by villages, towns, and cities, along the sea, along rivers and lakes, with a speed which may recall the gallop of the ghostly horseman in the ballad: —

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"Fled past on right and left how fast
Each forest, grove, and bower!
On right and left fled past how fast
Each city, town, and tower!

"Tramp! tramp! along the land they rode,
Splash! splash! along the sea."

On the banks of the Mississippi he is now arrested. The proposed road in Iowa will bear the adventurer yet further, to the banks of the Missouri; and this remote giant stream, mightiest of the earth, leaping from its sources in the Rocky Mountains, will be clasped with the Atlantic in the same iron bracelet. In all this I see not only further opportunities for commerce, but a new extension to civilization and increased strength to our National Union.

A heathen poet, while picturing the Golden Age, perversely indicates the absence of long roads as creditable to that imaginary period in contrast with his own. "How well," exclaims the youthful Tibullus, "they lived while Saturn ruled, — *before the earth was opened by long ways!*"

"Quam bene Saturno vivebant rege, priusquam
Tellus *in longas est patefacta vias!*" [1]

But the true Golden Age is before, not behind; and one of its tokens will be the opening of those *long ways*, by which villages, towns, counties, states, provinces, nations, are all to be associated and knit together in a fellowship that can never be broken.

[1] Eleg. Lib. I. iii. 35, 36.

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SECOND SPEECH.

THE debate on the Iowa Railroad Bill was continued on successive days down to February 17th, when the speech of Mr. Sumner was particularly assailed by Mr. Hunter, of Virginia. To this he replied at once.

ONE word, if you please, Mr. President. The Senator from Virginia [Mr. HUNTER], who has just taken his seat, has very kindly given me notice that I am to expect "a broadside" from the Senator from Kentucky [Mr. UNDERWOOD]. For this information I am properly grateful. When, a few days ago, I undertook to discuss an important question in this body, I expressed certain views, deemed by me of weight. Those views I submitted to the candor and judgment of the Senate. I felt confidence in their essential justice, and nothing heard since has impaired that confidence. I have listened with respect and attention to the address of the Senator from Virginia, as it becomes me to listen to everything any Senator undertakes to put forth here. But I hope to be excused, if I say, that, in all he has so eloquently uttered with reference to myself, he has not touched by a hair-breadth my argument. He has criticized — I am unwilling to say that he has cavilled at — my calculations; but he has not, by the ninth part of a hair, touched the conclusion which I drew. That still stands. And let me say that it cannot be successfully assailed in the way attempted by him.

I said that injustice is done to the Land States, out of this body and in this body: out of this body, because I often hear them called "land-stealers" and "land pirates"; in this body by the Senator from Virginia,

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when he complains of the partial distribution of the public lands, and particularly points out the bill now before the Senate as an instance. I said that this charge was without foundation. Why? On what ground? Because there is an existing equity (I so called it, — nothing more) on the part of the Land States as against the General Government. And on what is this founded? On a fact of record in the public acts of this country, — that is, the exemption of the public domain from taxation by the States in which it is situated. The Senator from Virginia does not question this fact; of course he cannot, for it is embodied in Acts of Congress.

The next inquiry, then, was, as to the value of this immunity, which I called an equity. To illustrate this value, I went into calculations and estimates, which I presented, after some study of the subject, — not, perhaps, such study as the Senator from Virginia has found time to give, or such as the Senator from Kentucky, in the plenitude of his researches, doubtless has given. On those calculations and estimates I attributed a certain value to the equity in question. My calculations and estimates may be overstated; they may be exaggerated. The Senator from Virginia thinks them so. Other gentlemen with whom I have had the privilege of conversing think them understated. However this may be, it does not touch the argument. I may have done injustice to my argument by overstating them. I intended to understate them. From all that I hear, I still think that I have understated them. But, whether understated or overstated, the argument still stands, that these States have conceded to the General Government an immunity from taxation, — that this

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immunity has a certain value, I think very large, — and that this value constitutes an equity to which the Land States have a right to appeal for bountiful, ay, for munificent treatment. Has the Senator from Virginia answered this argument? Can he answer it?

I forbear to go into the subject at this time. I rose simply to state, that, as the Senator from Virginia generously warns me that I am to expect "a broadside" from the Senator from Kentucky, I am to regard what he said to-day, so far as I am concerned, simply as a signal gun. The Senator will pardon me, if I say it is nothing more; for it has not reached me, or my argument. Meanwhile I await, with resignation, and without anxiety, the "broadside" from Kentucky.

THIRD SPEECH.

THE debate was continued for many days, during which the speech of Mr. Sumner was attacked and defended. Finally, on the 16th of March, immediately before the question was taken, he again returned to the subject.

MR. PRESIDENT, — Much time has been consumed by this question. At several periods the debate has seemed about to stop, and then again it has taken a new spring, while the goal constantly receded. I know not if it is now near the end. But I hope that I shall not seem to interfere with its natural course, or unduly occupy the time of the Senate, if I venture again for one moment to take part in it.

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The argument which I submitted on a former occasion has not passed unregarded. And since it can owe little to my individual position, I accept the opposition it encounters as a tribute to its intrinsic importance. It has been assailed by different Senators, on different days, and in different ways. It has been met by harmless pleasantry, and by equally harmless vituperation, — by figures of arithmetic and figures of rhetoric, — by minute criticism and extended discussion, — also, by that sure resource of a weak cause, hard words, and an imputation of personal motives. I propose no reply to all this array; least of all shall I retort hard words, or repel personal imputations. On this head I content myself with saying, — and confidently, too, — that, had he known me better, the Senator from Kentucky [Mr. UNDERWOOD], who is usually so moderate and careful, would have hesitated long before uttering expressions which fell from him in this debate.

The position I took is regarded as natural, or excusable, in a Senator from one of the Land States, acting under the vulgar spur of local interest; but it is pronounced unnatural and inexcusable in a Senator from Massachusetts. Now, Sir, it is sufficient for me to say, in reply to this imputation, that, while I know there are influences and biases incident to particular States or sections of the Union, I recognize no difference in the duties of Senators on this floor. Coming from different States and opposite sections, we are all Senators of the Union; and our constant duty is, without fear or favor, to introduce into the national legislation the principle of justice. In this spirit, while sustaining the bill before the Senate, I spoke for justice to the Land States.

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In my present course, I but follow the example of Senators and Representatives of Massachusetts on kindred measures from their earliest introduction down to the present time. The first instance was in 1823, on the grant to the State of Ohio of land one hundred and twenty feet wide, with one mile on each side, for the construction of a road from the lower rapids of the Miami River to the western boundary of the Connecticut Reserve. On the final passage of this grant in the House, the Massachusetts delegation voted as follows: Yeas, — Samuel C. Allen, Henry W. Dwight, Timothy Fuller, Jeremiah Nelson, John Reed, Jonathan Russell; Nay, — Benjamin Gorham. In the Senate the bill passed without a division. In 1828 a still greater unanimity occurred on the passage of the bill to aid the State of Ohio in extending the Miami Canal from Dayton to Lake Erie; and this bill is an early instance of the grant of alternate sections, as in that now before the Senate. On this the Massachusetts delegation in the House voted as follows: Yeas, — Isaac C. Bates, Benjamin W. Crowninshield, John Davis, Edward Everett, John Locke, John Reed, Joseph Richardson, John Varnum; Nays, — none. In the Senate, Messrs. Silsbee and Webster both voted in the affirmative. I pass over intermediate grants, which, I am told, were sustained by the Massachusetts delegations with substantial unanimity. The extensive grants, by the last Congress, to Illinois, Mississippi, and Alabama, in aid of a railroad from Chicago to Mobile, were sustained by all the Massachusetts votes in the House, except one.

Still further, in sustaining the present bill on grounds of justice to the Land States, I but follow the recorded instructions of the Legislature of Massachusetts, ad-

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dressed to its Senators and Representatives here on a former occasion. The subject was presented in a special message to the Legislature in 1841, by the distinguished Governor at that time,[1] who strongly urged "a liberal policy towards the actual settler, and *towards the new States*, for this is justly due to both." And he added: "Such States are entitled to a more liberal share of the proceeds of the public lands than the old States, as we owe to their enterprise much of the value this property has acquired. *It seems to me, therefore, that justice towards the States in which these lands lie demands a liberal and generous policy towards them.*"[2] In accordance with this recommendation, it was resolved by the Legislature, "That, in the disposition of the public lands, *this Commonwealth approves of making liberal provisions in favor of the new States;* and that she ever has been, and still is, ready to cooperate with other portions of the Union in securing to those States such provisions."[3] Thus a generous policy towards the Land States, with liberal provisions in their favor, was considered by Massachusetts the part of justice.

It was my purpose, before this debate closed, to consider again the argument I formerly submitted, and to vindicate its accuracy in all respects, both in principle and in detail. But this has already been so amply done by others much abler than myself, — by the Senator from Missouri [Mr. GEYER], both the Senators from Michigan [Mr. FELCH and Mr. CASS], the Senator from Arkansas [Mr. BORLAND], the Senator from Iowa [Mr.

[1] Hon. John Davis.
[2] Mass. House Documents, 1841, No. 23, pp. 2, 3.
[3] Mass. Acts and Resolves, 1841, p. 422.

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DODGE], and the Senator from Louisiana [Mr. DOWNS], — all of whom, with different degrees of fulness, have urged the same grounds in favor of this bill, that I feel unwilling at this hour, and while the Senate actually waits to vote on the question, to occupy time by further dwelling upon it. Perhaps on some other occasion I may think proper to return to it.

But, while avoiding what seems superfluous discussion, I cannot forbear asking your attention to the amendment of the Senator from Kentucky [Mr. UNDERWOOD].

This amendment, when addressed to Senators of the favored States, is of a most plausible character. It proposes to give portions of the public domain to the original Thirteen, together with Vermont, Maine, Tennessee, and Kentucky, for purposes of education and internal improvement, at the rate of one acre to each inhabitant according to the recent census. This is commended by the declared objects, — education and internal improvement. Still further, in its discrimination of the old States, it assumes a guise well calculated to tempt them into its support. It holds out the attraction of seeming, though unsubstantial, self-interest. It offers a lure, a bait, to be unjust. I object to it on several grounds.

1. But I put in the fore-front, as my chief objection, its clear, indubitable, and radical injustice, written on its very face. The amendment confines its donations to the old States, and, so doing, makes an inequitable discrimination in their favor. It tacitly assumes, that, by the bill in question, or in some other way, the Land States have received their proper distributive portion, so as to lose all title to share with the old States in the pro-

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posed distribution. But, if there be any force in the argument, so much considered in this debate, that these railroad grants actually enhance the value of the neighboring lands of the United States, and constitute a proper mode of bringing them into the market, or if there be any force in the other argument which I have presented, drawn from the equitable claims of the Land States, in comparison with the other States, to the bounty of the *great untaxed proprietor*,[1] then this assumption is unfounded. There is no basis for the discrimination made by the amendment. If the Iowa Land Bill be proper without this amendment, as most will admit, then this amendment, introducing a new discrimination, is improper. Nor do I well see how any one prepared to sustain the original bill can sustain the amendment. The Senator from Kentucky, who leads us to expect his vote for the bill, seems to confess the injustice of his attempted addition.

2. I object to it as out of place. The amendment engrafts upon a special railroad grant to a single State a novel distribution of the national domain. Now there is a place and a time for all things; and nothing seems to me more important in legislation than to keep all things in their proper place, and to treat them at their proper time. The distribution of the public lands is worthy of attention; and I am ready to meet this great question whenever it arises legitimately for our consideration; but I object to considering it merely as a rider to the Iowa Land Bill.

[1] Mr. Webster, in his greatest speech, the celebrated reply to Mr. Hayne, touched on this consideration. He said: "And, finally, have not these new States singularly strong claims, founded on the ground already stated, that the Government is a great untaxed proprietor in the ownership of the soil?" — *Speeches*, Vol. III. p. 291.

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The amendment would be less objectionable, if proposed as a rider to a general system of railroad grants, — as, for instance, to a bill embracing grants to all the Land States; but it is specially objectionable as a graft upon the present bill. The Senator who introduced it doubtless assumed that other bills, already introduced, would pass; but, if his amendment be founded on this assumption, it should wait the action of Congress on all these bills.

3. If adopted, the amendment might endanger, if it did not defeat, the Iowa Land Bill. This seems certain. Having this measure at heart, believing it founded in essential justice, I am unwilling to place it in this jeopardy.

4. It prepares the way for States of this Union to become landholders in other States, subject, of course, to the legislation of those States, — an expedient which, though not strictly objectionable on grounds of law, or under the Constitution, is not agreeable to our national policy. It should not be promoted without strong and special reasons. In the bill introduced by the Senator from Illinois [Mr. SHIELDS], bestowing lands for the benefit of the insane in different States, this objection is partially obviated by providing that the States in which there are no public lands shall select their portion in the Territories of the United States, and not in other States. But, since in a short time these very Territories may become States, this objection is rather adjourned than removed.

5. Lands held under this amendment, though in the hands of States, will be liable to taxation, as lands of other non-resident proprietors, and on this account will be comparatively valueless. For this reason I said that

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the amendment held out the attraction of seeming, though unsubstantial, self-interest. That the lands will be liable to taxation cannot be doubted. The amendment does not propose in any way to relieve them from this burden, nor am I aware that they can be relieved from it. The existing immunity is only so long as they belong to the United States. Now there is reason to believe, that, from lack of agencies and other means familiar to the United States, the lands distributed by this amendment would not find as prompt a market as those still in the hands of the Great Landholder. But however this may be, it is entirely clear, from the recorded experience of the national domain, that these lands, if sold at the minimum price of the public lands, and only as rapidly as those of the United States, and if meanwhile they are subject to the same burdens as the lands of other non-residents, will, before the sales are closed, be eaten up by the taxes. The taxes will amount to more than the entire receipts from sales; and thus the grant, while unjust to the Land States, will be worthless to the old States, the pretended beneficiaries. In the Roman Law, an insolvent inheritance was known by an expressive phrase as *damnosa hæreditas*. A grant under this amendment would be *damnosa donatio*.

For such good and sufficient reasons, I am opposed to this amendment.

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J. FENIMORE COOPER, THE NOVELIST.

LETTER TO THE REV. RUFUS W. GRISWOLD, FEBRUARY 22, 1852.

WASHINGTON, February 22, 1852.

MY DEAR SIR, — It is not in my power to be present at the proposed demonstration in memory of the late Mr. Cooper. But I am glad of the opportunity, afforded by the invitation with which I have been honored, to express my regard for his name and my joy that he lived and wrote.

As an author of clear and manly prose, as a portrayer to the life of scenes on land and sea, as a master of the keys to human feelings, and as a beneficent contributor to the general fund of happiness, he is remembered with delight.

As a patriot who loved his country, who illustrated its history, who advanced its character abroad, and by his genius won for it the unwilling regard of foreign nations, he deserves a place in the hearts of the American people.

I have seen his works in cities of France, Italy, and Germany. In all these countries he was read and admired. Thus by his pen American intervention was peacefully, inoffensively, and triumphantly carried into the heart of the European Continent.

In honoring him we exalt literature and the thrice

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blessed arts of peace. Our country will learn anew from your demonstration that there are glories other than those of state or war.

I have the honor to be, dear Sir,

Your obedient servant,

CHARLES SUMNER.

REV. RUFUS W. GRISWOLD.

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CHEAP OCEAN POSTAGE.

SPEECH IN THE SENATE, ON A RESOLUTION IN RELATION TO CHEAP OCEAN POSTAGE, MARCH 8, 1852.

THIS proposition Mr. Sumner constantly renewed at subsequent sessions of Congress.

MR. PRESIDENT, — I submit the following resolution. As it is one of inquiry, I ask that it may be considered at this time.

Resolved, That the Committee on Naval Affairs, while considering the nature and extent of aid proper to be granted to the Ocean Steamers, be directed to inquire whether the present charges for letters carried by these steamers are not unnecessarily large and burdensome to foreign correspondence, and whether something may not be done, and, if so, what, to secure the great boon of Cheap Ocean Postage.

There being no objection, the question was stated to be on the adoption of the resolution.

MR. PRESIDENT, — The Committee on Naval Affairs have the responsibility of shaping some measure by which the relations of our Government with the ocean steamers will be defined. And since one special inducement to these relations, involving the bounty now enjoyed and further solicited, is the carrying of the mails, I trust this Committee will be willing to inquire whether

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there cannot be a reduction on the postage of foreign correspondence. Under the Postage Act of 1851, the Postmaster, by and with the advice of the President, has power to reduce, from time to time, the rates of postage on all mailable matter conveyed between the United States and any foreign country. But the existence of this power in the Postmaster will not render it improper for the Committee, now drawn into connection with this question, to take it into careful consideration, with a view to some practical action, or, at least, recommendation. The subject is of peculiar interest; nor do I know any measure, so easily accomplished, which promises to be so beneficent as cheap ocean postage. The argument in its favor is at once brief and unanswerable.

A letter can be sent three thousand miles in the United States for three cents, and the reasons for cheap postage on land are equally applicable to ocean.

In point of fact, the conveyance of letters can be effected in sailing or steam packets at less cost than by railway.

Besides, cheap ocean postage will tend to supersede the clandestine or illicit conveyance of letters, and to bring into the mails all mailable matter, which, under the present system, is carried in the pockets of passengers or in the bales and boxes of merchants.

All new facilities for correspondence naturally give new expansion to human intercourse; and there is reason to believe, that, through an increased number of letters, cheap ocean postage will be self-supporting.

Cheap postal communication with foreign countries will be of incalculable importance to the commerce of the United States.

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By promoting the intercourse of families and friends separated by ocean, cheap postage will add to the sum of human happiness.

The present high rates of ocean postage — namely, twenty-four cents on half an ounce, forty-eight cents on an ounce, and ninety-six cents on a letter which weighs a fraction more than an ounce — are a severe tax upon all, particularly upon the poor, amounting, in many cases, to a complete prohibition of foreign correspondence. This should not be.

It particularly becomes our country, by the removal of all unnecessary burdens upon foreign correspondence, to advance the comfort of European emigrants seeking a home among us, and to destroy, as far as practicable, every barrier to free intercourse between the Old World and the New.

And, lastly, cheap ocean postage will be a bond of peace among the nations of the earth, and will extend good-will among men.

By such reasons this measure is commended. Much as I rejoice in the American steamers, which vindicate a peaceful supremacy of the seas, and help to weave a golden tissue between the two hemispheres, I cannot consider these, with all their unquestionable advantages, an equivalent for cheap ocean postage. I trust that they are not inconsistent with each other, and that both may flourish together.

Objection was made to the resolution, as not being addressed to the proper Committee, and a brief debate ensued, in which Mr. Rusk, Mr. Gwin, Mr. Badger, Mr. Davis, Mr. Seward, Mr. Mason, and Mr. Sumner took part. It was urged by the last, in reply, that the Committee on Naval Affairs was the proper Committee, as at the present moment it is specially charged with a subject intimately connected with the inquiry

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proposed. At the suggestion of Mr. Badger the matter was allowed to lie over till the next day.

On Tuesday, March 9th, the Senate proceeded to consider the resolution submitted by Mr. Sumner on the 8th, relative to Ocean Steamers and Cheap Ocean Postage. On motion of Mr. Sumner, it was amended, and finally adopted, without opposition, as follows : —

"*Resolved*, That the Committee on the Post Office and Post Roads be directed to inquire whether the present charges on letters carried by the Ocean Steamers are not unnecessarily large and burdensome to foreign correspondence, and whether something may not be done, and, if so, what, to secure the great boon of Cheap Ocean Postage."

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THE PARDONING POWER OF THE PRESIDENT.

OPINION SUBMITTED TO THE PRESIDENT, MAY 14, 1852, ON THE APPLICATION FOR THE PARDON OF DRAYTON AND SAYRES, INCARCERATED AT WASHINGTON FOR HELPING THE ESCAPE OF SLAVES.

THIS case, from beginning to end, is a curious episode of Antislavery history. The people of Washington were surprised, on the morning of April 16, 1848, at hearing that the "Pearl," a schooner from the North, had sailed down the Potomac with seventy-six slaves, who had hurried aboard in the vain hope of obtaining their freedom. The schooner was pursued and brought back to Washington with her human cargo, and the liberators, Drayton, master, and Sayres, mate. As the latter were taken from the river-side to the jail, they were followed by a proslavery mob, estimated at from four to six thousand people, many armed with deadly weapons, amid wrathful cries of, "Hang him!" "Lynch him!" with all profanities and abominations of speech, and exposed to violence of all kinds, — the thrust of a dirk-knife coming within an inch of Drayton. The same mob besieged the jail, and, hearing that Hon. Joshua R. Giddings, the brave Representative of Ohio, was there in consultation with the prisoners, demanded his immediate expulsion, and the jailer, to save bloodshed, insisted upon his departure. Nor was the prevailing rage confined to the jail. It extended to the office of the "National Era," the Antislavery paper, which was saved from destruction only through the courage and calmness of its admirable editor. The spirit of the mob entered both Houses of Congress, and the slave-masters raged, as was their wont.

Meanwhile Drayton and Sayres were indicted before the Criminal Court of the District of Columbia for "transporting" slaves. There were no less than one hundred and fifteen indictments against each of the prisoners, and the bail demanded of each was seventy-six thousand dollars. Hon. Horace Mann, a Representative of Massachusetts, appeared for the defence. His speech on this occasion will be read with constant interest.[1] The spirit of the mob without entered the court-

[1] Slavery: Letters and Speeches by Horace Mann, pp. 84–118.

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room, betraying itself even in the conduct of the judge, while standing near the devoted counsel for the defence were men who cocked pistols and drew dirks in the mob that followed the prisoners to the jail. Of course the verdict was "Guilty," and the sentence was according to the extreme requirement of a barbarous law.

Drayton and Sayres lingered in prison more than four years, and during this long incarceration they were the objects of much sympathy at the North. A petition to Congress in their behalf, signed by leading Abolitionists, including the eloquent Wendell Phillips, was forwarded to Mr. Sumner for presentation to the Senate. On careful consideration, he was satisfied that such a petition, if presented, would excite the dominant power to insist more strongly than ever on the letter of the law, and he took the responsibility of withholding it. Meanwhile he visited the sufferers in prison, and appealed to President Fillmore for their pardon. In this application he was aided by that humane lady, Miss Dix. The President interposed doubts of his right to pardon in such a case, but expressed a desire for light on this point. At his invitation, Mr. Sumner laid before him the following paper, which was referred to the Attorney-General, Mr. Crittenden, who gave an opinion affirming the power of the President, — adding, however, "Whether the power shall be exercised in this instance is another and very different question."[1] This opinion bears date August 4, 1852, which, it will be observed, was some time after the Presidential Conventions of the two great political parties. Shortly afterwards the pardon was granted.

There was reason to believe that an attempt would be made to arrest the pardoned persons on warrants from the Governor of Virginia. Anticipating this peril, Mr. Sumner, as soon as the pardon was signed, hurried to the jail in a carriage, and, taking them with him, put them in charge of a friend, who conveyed them that night to Baltimore, a distance of forty miles, where they arrived in season for the early morning trains North, and in a few hours were out of danger.

BY the laws of Maryland, 1737, chapter 2, section 4, it is provided that any person "who shall steal any negro or other slave, or who shall counsel, hire, aid, abet, or command any person or persons" to do so, "shall suffer death as a felon." The punishment has since been changed to imprisonment, for a term not less than seven nor more than twenty years.

[1] Opinions of Attorneys-General, Vol. V. pp. 580–591.

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Fourteen years later, by the act of 1751, chapter 14, section 10, it was provided, that, "if any free person shall entice and persuade any slave within this province to run away, and who shall actually run away, from the master, owner, or overseer, and be convicted thereof, by confession, or verdict of a jury upon an indictment or information, shall forfeit and pay the full value of such slave to the master or owner of such slave, to be levied by execution on the goods, chattels, lands, or tenements of the offender, and, in case of inability to pay the same, shall suffer one year's imprisonment without bail or mainprise."

Still later, by the act of 1796, chapter 67, section 19, "the transporting of any slave or any person held to service" from the State was made a distinct offence, for which the offender was liable in an action of damages, and also by indictment.

By the Act of Congress organizing the District of Columbia (February 27, 1801) it was declared, that "the laws of the State of Maryland, as they now exist, shall be and continue in force in that part of the said District which was ceded by that State to the United States, and by them accepted as aforesaid." Under this provision, these ancient laws of Maryland are to this day of full force in the District of Columbia.

The facts to be considered are few. Messrs. Drayton and Sayres, on indictment and trial, under the act of 1737, for stealing slaves, were acquitted, the jury rendering a verdict of "Not guilty." Resort was then had to the statute of 1796, chapter 67, section 19, as follows.

"And be it enacted, That any person or persons, who shall hereafter be convicted of giving a pass to any slave, or per-

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son held to service, or shall be found to assist, by advice, donation, or loan, or otherwise, the transporting of any slave, or any person held to service, from this State, or by any other unlawful means depriving a master or owner of the service of his slave, or person held to service, for every such offence the party aggrieved shall recover damages in an action on the case against such offender or offenders; and such offender or offenders also shall be liable, upon indictment, and conviction upon verdict, confession, or otherwise, in this State, in any county court where such offence shall happen, [to] be fined a sum not exceeding two hundred dollars, at the discretion of the court, one half to the use of the master or owner of such slave, the other half to the county school, in case there be any; if no such school, to the use of the county."

Under this statute, proceedings were instituted by the Attorney of the District of Columbia against these parties, in seventy-four different indictments, each indictment being founded on the alleged "transporting" of a single slave. On conviction, Drayton was sentenced on each indictment to a fine of $140 and costs, in each case $19.49, amounting in the sum-total to $11,802.26. On conviction, Sayres was sentenced on each indictment to a fine of $100 and costs, in each case $17.38, amounting in the sum-total to $8,686.12. One half of the fine was, according to law, to the use of the masters or owners of the slaves transported; the other half, to the county school, — or, in case there were no such school, to the use of the county. Afterwards, on motion of the Attorney for the District, they were "prayed in commitment," and committed until the fine and costs should be paid. In pursuance of this sentence, and on this motion, they have been detained in prison, in the City of

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Washington, since April, 1848, and are still in prison, unable from poverty to pay these large fines. The question now occurs as to the power of the President to pardon them, *so at least as to relieve them from imprisonment.*

The peculiar embarrassment in this case arises from the nature of the sentence. If it were simply a sentence of imprisonment, the power of the President would be unquestionable. So, also, if it were a sentence of imprisonment, with fine superadded, payable to the United States, his power would be unquestionable; and the same power would extend to the case of a fine payable to the United States, with imprisonment as the alternative on non-payment of the fine.

But in the present case imprisonment is the alternative for non-payment of fines which are not payable to the United States, but to other parties, namely, the slave-owners and the county. It is important, however, to bear in mind that these fines are a mere donation to these parties, and not a compensation for services rendered. These parties are not informers, nor were the proceedings in the nature of a *qui tam* action.

It should be distinctly understood, at the outset, that the proceedings against Drayton and Sayres were not at the suit of any informer or private individual, but at the prosecution of the United States by indictment. They are therefore removed from the authority of the English cases, which protect the share of an informer after judgment from remission by pardon from the crown.

The power of the President in the present case may be regarded, *first*, in the light of the Common Law, —

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secondly, under the statutes of Maryland, — and, *thirdly*, under the Constitution of the United States.

First. As to the *Common Law*, it may be doubtful, whether, according to early authorities, the pardoning power can be used so as to bar or divest any legal interest, benefit, or advantage vested in a private individual. It is broadly stated by English writers that it cannot be so used. (2 Hawkins, P. C., 392, Book II., chap. 37, sec. 34; 17 Viner's Abridgment, 39, Prerogative of the King, U. art. 7.) But this principle does not seem to be sustained by practical cases in the United States, except in the instances of informers and *qui tam* actions, while, on one occasion, in a leading case of Kentucky, it was rejected. (*Routt* v. *Feemster*, 7 J. J. Marshall, 132.)

But it is clearly established, that, where the fine is allotted to a public body, or a public officer, for a public purpose, it may be remitted by pardon. This may be illustrated by several cases.

1. As where, in Pennsylvania, the fine was for the benefit of the county. In this case the Court said: "Until the money is collected and paid into the treasury, the constitutional right of the Governor to pardon the offender, and remit the fine or forfeiture, remains in full force. They can have no more vested interest in the money than the Commonwealth, under the same circumstances, would have had; and it cannot be doubted, that, until the money reaches the treasury, the Governor has the power to remit. . . . . In the case of costs, private persons are interested in them; but as to fines and forfeitures, they are imposed upon principles of public policy. The latter, therefore, are under the exclusive control of the Governor." (*Commonwealth* v. *Denniston*,

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9 Watts, 142.) The same point is also illustrated by a case in Illinois. (*Holliday* v. *The People*, 5 Gilman, 214 – 217.)

2. As where, in Georgia, the fine was to be paid to an inferior court for county purposes. (*In Re* Flournoy, Attorney-General, 1 Kelly, 606 – 610.)

3. As where, in South Carolina, the fine was to be paid to the Commissioners of Public Buildings, for public purposes, (*The State* v. *Simpson*, 1 Bailey, 378,) or the Commissioners of the Roads. (*The State* v. *Williams*, 1 Nott & McCord, 26. See also *Rowe* v. *The State*, 2 Bay, 565.)

According to these authorities, the portion of the fine allotted to the county, or to the school, may be remitted. Of this there can be no doubt.

Secondly. The Statutes of Maryland, anterior to the organization of the District of Columbia, may also be regarded as an independent source of light on this question, since these statutes are made the law of the District. And here the conclusion seems to be easy.

By the Constitution of Maryland, adopted November 8th, 1776, it is declared: "The Governor may grant reprieves or pardons for any crime, except in such cases where the law shall otherwise direct." Notwithstanding these strong words of grant, which seem to be as broad as the Common Law, it was further, as if to remove all doubt, declared by the Legislature, in 1782 (Chap. 42, sec. 3): "That the Governor, with the advice of the Council, be authorized *to remit the whole or any part of any fine*, penalty, or forfeiture, heretofore imposed, or hereafter to be imposed, in any court of law." Here is no exception or limitation of any kind. By express

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words, the Governor is authorized to remit the whole or any part of any fine. Of course, under this clause he cannot remit a private debt; but he may remit *any fine*. The question is not, whether the fine be payable to the United States or other parties, but whether it is *a fine*. If it be a fine, it is in the power of the Governor.

This view is strengthened by the circumstance, that in Maryland, according to several statutes, fines are allotted to parties other than the Government. The very statute of 1796, under which these proceedings were had, was passed subsequently to this provision respecting the remission of fines. It must be interpreted in harmony with the earlier statute; and since all these statutes are now the law of the District of Columbia, the power of the President, under these laws, to remit these fines, seems established without special reference to the Common Law or to the Constitution of the United States.

If this were not the case, two different hardships would ensue: first, the statute of 1782 would be despoiled of its natural efficacy; and, secondly, the minor offence of "transporting" a single slave would be punishable, on non-payment of the fine, with imprisonment for life, while the higher offence of "stealing" a slave is punishable with imprisonment for a specific term, and the other offence of "enticing" a slave is punishable with a fine larger than that for transporting a slave, and, on non-payment thereof, imprisonment for one year only.

Thirdly. Look at the case under the *Constitution of the United States.*

By the Constitution, the President has power "to grant reprieves and pardons for offences against the

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United States, except in cases of impeachment." According to a familiar rule of interpretation, the single specified exception leaves the power of the President applicable to all other cases: *Expressio unius exclusio est alterius.* Mr. Berrien, in one of his opinions as Attorney-General, recognizes "the pardoning power as coextensive with the power to punish"; and he quotes with approbation the words of another writer, that "the power is general and unqualified," and that "the remission of fines, penalties, and forfeitures, under the revenue laws, is included in it." (Opinions of the Attorneys-General, Vol. I. p. 756.)

On this power Mr. Justice Story thus remarks: "The power of remission of fines, penalties, and forfeitures is also included in it, and may, in the last resort, be exercised by the Executive, although it is in many cases by our laws confided to the Treasury Department. No law can abridge the constitutional powers of the Executive Department, or interrupt its right to interpose by pardon in such cases. — Instances of the exercise of this power by the President, in remitting fines and penalties, in cases not within the scope of the laws giving authority to the Treasury Department, have repeatedly occurred, and their obligatory force has never been questioned." (Story, Com. on Constitution, Vol. II. § 1504.)

It has been decided by the Supreme Court, after elaborate argument, that "the Secretary of the Treasury has authority, under the Remission Act of the 3d of March, 1797, chap. 361, to remit a forfeiture or penalty accruing under the revenue laws, at any time, before or after a final sentence of condemnation or judgment for the penalty, until the money is actually paid over to the Collector for distribution"; and that "such remission

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extends to the shares of the forfeiture or penalty to which the officers of the customs are entitled, as well as to the interest of the United States." In giving his opinion on this occasion, Mr. Justice Johnson, of South Carolina, made use of language much in point. "Mercy and justice," he said, "could only have been administered by halves, if collectors could have hurried causes to judgment, and then clung to the one half of the forfeiture, in contempt of the cries of distress or the mandates of the Secretary." (*United States* v. *Morris*, 10 Wheaton, 303.)

A case has occurred in Kentucky, to which reference has been already made, in which it is confidently and broadly assumed that the pardoning power under the Constitution extends even to the penalties due to informers. The following passage occurs in the opinion of the Court. "The act of 1823 says that any prosecuting attorney, who shall prosecute any person to conviction under it, shall be entitled to twenty-five per cent of the amount of such fine as shall be collected. . . . . The act gives the prosecuting attorney one fourth of the money, when collected, but vests him with no interest in the fine or sentence, separate and distinct from that of the Commonwealth, that would screen his share from the effect of any legal operation which should, before collection, abrogate the whole or a part of it. It would require language of the strongest and most explicit character to authorize a presumption that the Legislature intended to confer any such right. We could never presume an intention to control the Governor's constitutional power to remit fines and forfeitures. *If he can in this way be restrained in the exercise of his power to remit for the fourth of a fine, so can he be for*

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the half or the whole. This part of his prerogative cannot be curtailed. With the exception of the case of treason, his power to remit fines and forfeitures, grant reprieves and pardons, is unlimited, illimitable, and uncontrollable. It has no bounds but his own discretion. It is no doubt politic and proper for the Legislature to incite prosecuting attorneys and informers, by giving them a portion of fines, when collected; but in so doing the citizen cannot be debarred of his right of appeal to executive clemency." (*Routt* v. *Feemster*, 7 J. J. Marshall, 132.)

According to these authorities, it seems reasonable to infer, that, under the Constitution of the United States, the pardoning power, which is clearly applicable to the offence of "transporting" slaves of the District, might remit the penalties in question. These penalties, though allotted to the owners and the county, when finally collected, are neither more nor less than the punishment, under sentence of a criminal court, for an offence of which the parties stand convicted upon indictment. They can be collected and acquitted only by the United States. No process for this purpose is at the command of the slave-owner. He had no control whatever over the prosecution at any stage, nor did it proceed at his suggestion or information. The very statute under which these public proceedings were instituted in the name of the United States secured to the slave-owner his private action on the case for damages, — thus separating the public from the private interests. These it seems the duty of the President to keep separate, except on the final collection and distribution of the penalties. Public policy and the ends of justice require that the punishment for a criminal offence should, in every case, be exclusively subject to the supreme pardoning power,

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without dependence upon the will of any private person. An obvious case will illustrate this. Suppose, in the case of Drayton and Sayres, it should be ascertained beyond doubt that the conviction was procured by perjury. If, by virtue of the judgment, the slave-owners have an interest in the imprisonment of these men which cannot be touched, then the prisoners, unable to meet these heavy liabilities, must continue in perpetual imprisonment, or owe their release to the accident of private good-will. The President, notwithstanding his beneficent power to pardon, under the Constitution, will be powerless to remedy this evil. But such a state of things would be monstrous; and any interpretation of the Constitution is monstrous which thus ties his hands. Mercy and justice would be rendered not merely *by halves*, but, owing to the inability of prisoners, from poverty, to pay the other half of the fine, they would be entirely arrested.

The power of pardon, which is attached by the Constitution to offences generally, should not be curtailed. It is a generous prerogative, and should be exercised generously. *Boni judicis est ampliare jurisdictionem.* This is an old maxim of the law. But if it be the duty of a good judge to extend his jurisdiction, how much more is it the duty of a good President to extend the field of his clemency! At least, no small doubt should deter him from the exercise of his prerogative.

The conclusion from this review is as follows.

1. By the English Common Law the costs and one half of the fines may be remitted. It is not certain that by this law, as adopted in the United States, the other half of the fines may not also be remitted.

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2. Under the statutes of Maryland, now the law of the District, the Governor, and, of course, the President, may remit "the whole or any part of any fine," without exception.

3. Under the Constitution of the United States, and according to its true spirit, the pardoning power of the President is coextensive with the power to punish, except in the solitary case of impeachment.

Several courses are open to the President in the present case.

I. By a *general pardon* he may discharge Drayton and Sayres *from prison, and remit all the fines and costs for which they are detained.* Such a pardon would unquestionably operate effectually upon the imprisonment and upon the costs, and also upon the half of the fines due to the county. It would be for the courts, on a proper application, and in the exercise of their just powers, to restrict it, if the pardon did not operate upon the other moiety.

Among the opinions of the Attorney-General is a case which illustrates this point. In 1824 Joshua Wingate prayed for a credit, in the settlement of his accounts, for his proportion of a fine incurred by one Phineas Varney. It appeared that suit was instituted by the petitioner as Collector of the District of Bath, Maine, on which judgment was obtained in May, 1809; the defendant was arrested and committed to jail, under execution on that judgment, and the fine was afterwards remitted by the President. The petitioner contended that the President had no constitutional or legal power to remit his proportion of the fine, the right to which had vested by the institution of the suit. On this Mr.

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Wirt remarks, that "it is unnecessary to express an opinion upon the correctness of this position, because, if it be correct, the act of remission by the President being wholly inoperative as to that portion of the fine claimed by the collector, his legal right to recover it remained in full force, notwithstanding the remission; and it is his own fault, if he has not enforced his right at law." (Opinions of the Attorneys-General, Vol. I. p. 479.)

A general pardon cannot conclude the question so as to divest any existing rights. It can do no wrong. Why should the President hesitate to exercise it?

II. By a *limited pardon* the President may discharge Drayton and Sayres simply and exclusively *from their imprisonment, without touching their pecuniary liability,* but leaving them still exposed to proceedings for all fines and costs, to be satisfied out of any property they may hereafter acquire.

If the imprisonment were a specific part of the sentence, — as, if they had been sentenced to one year's imprisonment and a fine of one hundred dollars, — beyond all question they might be discharged, by pardon, from this imprisonment. But where the imprisonment, as in the present case, is not a specific part of the sentence, but simply an alternative in the nature of a remedy, to secure the payment of the fine, the power of the President cannot be less than in the former case.

So far as all private parties are concerned, the imprisonment is a mere matter of *remedy,* which can be discharged without divesting the beneficiaries of any rights; and since imprisonment for debt has been abolished, it is reasonable, under the circumstances, that this peculiar remedy should be discharged.

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III. By another form of *limited pardon*, the President may discharge Drayton and Sayres *from their imprisonment, also from all fines and costs in which the United States have an interest*, without touching the rights of other parties.

This would set them at liberty, but would leave them exposed to private proceedings at the instigation of the owners of the "transported" slaves, if any should be so disposed.

IV. By still another form of pardon, reference may be made to the Maryland statute of 1782, under which the Governor is authorized "to remit the whole or any part of any fine," without any exception therefrom; and this power, now vested in the President, may be made the express ground for the remission of all fines and costs due from Drayton and Sayres. By this form of pardon the case may be limited, as a precedent hereafter, to a very narrow circle of cases. It would not in any way affect cases arising under the general laws of the Union.

In either of these alternatives the great object of this application would be gained, — the discharge of these men from prison.

CHARLES SUMNER.

May 14, 1852.

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PRESENTATION OF A MEMORIAL AGAINST THE FUGITIVE SLAVE BILL.

REMARKS IN THE SENATE, MAY 26, 1852.

IN THE SENATE, Wednesday, 26th May, 1852, on the presentation of a Memorial against the Fugitive Slave Bill, the following passage occurred, which illustrates the sensitiveness of the Senate with regard to Slavery and the impediments to its discussion. Mr. Sumner said: —

MR. PRESIDENT, — I hold in my hand, and desire to present, a memorial from the representatives of the Society of Friends in New England, formally adopted at a public meeting, and authenticated by their clerk, in which they ask for the repeal of the Fugitive Slave Bill. After setting forth their sentiments on the general subject of Slavery, the memorialists proceed as follows.

"We, therefore, respectfully, but earnestly and sincerely, entreat you to repeal the law of the last Congress respecting fugitive slaves: first and principally, because of its injustice towards a long sorely oppressed and deeply injured people; and, secondly, in order that we, together with other conscientious sufferers, may be exempted from the penalties which it imposes on all who, in faithfulness to their Divine Master, and in discharge of their obligations to their distressed fellow-men, feel bound to regulate their conduct, even under the heaviest penalties which man can inflict for so doing, by the divine injunction, 'All things whatsoever ye

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would that men should do to you, do ye even so to them,' and by the other commandment, 'Thou shalt love the Lord thy God with all thy heart, and thy neighbor as thyself.'"

Mr. President, — This memorial is commended by the character of the religious association from which it proceeds, — men who mingle rarely in public affairs, but with austere virtue seek to carry the Christian rule into life.

THE PRESIDENT [Mr. KING, of Alabama]. The Chair will have to interpose. The Senator is not privileged to enter into a discussion of the subject now. The contents of the memorial, simply, are to be stated, and then it becomes a question whether it is to be received, if any objection is made to its reception. Silence gives consent. After it is received, he can make a motion with regard to its reference, and then make any remarks he thinks proper.

Mr. SUMNER. I have but few words to add, and then I propose to move the reference of the memorial to the Committee on the Judiciary.

THE PRESIDENT. The memorial has first to be received, before any motion as to its reference can be entertained. The Senator presenting a memorial states distinctly its objects and contents; then it is sent to the Chair, if a reference of it is desired. But it is not in order to enter into a discussion of the merits of the memorial until it has been received.[1]

MR. SUMNER. I do not propose to enter into any such discussion. I have already read one part of the memorial, and it was my design merely to refer to the character of the memorialists, — a usage which I have observed on this floor constantly, — and to state the course I should pursue, concluding with a motion for a reference.

[1] On any subject but Slavery there was no check upon Senators at any time.

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THE PRESIDENT. The Chair will hear the Senator, if such is the pleasure of the Senate, if he does not go into an elaborate discussion.

MR. SUMNER. I have no such purpose.

MR. DAWSON [of Georgia]. Let him be heard.

SEVERAL SENATORS. Certainly.

MR. SUMNER. I observed that this memorial was commended by the character of the religious association from which it proceeds. It is commended also by its earnest and persuasive tone, and by the prayer which it presents. Offering it now, Sir, I desire simply to say, that I shall deem it my duty, on some proper occasion hereafter, to express myself at length on the matter to which it relates. Thus far, during this session, I have forborne. With the exception of an able speech from my colleague [Mr. DAVIS], the discussion of this all-absorbing question has been mainly left with Senators from another quarter of the country, by whose mutual differences it is complicated, and between whom I do not care to interfere. But there is a time for all things. Justice also requires that both sides should be heard; and I trust not to expect too much, when, at some fit moment, I bespeak the clear and candid attention of the Senate, while I undertake to set forth, frankly and fully, and with entire respect for this body, convictions deeply cherished in my own State, though disregarded here, to which I am bound by every sentiment of the heart, by every fibre of my being, by all my devotion to country, by my love of God and man. Upon these I do not enter now. Suffice it, for the present, to say, that, when I undertake that service, I believe I shall utter nothing which, in any just sense, can be called *sectional*, unless the Constitution is sectional, and unless

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the sentiments of the Fathers were sectional. It is my happiness to believe, and my hope to be able to show, that, according to the true spirit of the Constitution, and according to the sentiments of the Fathers, FREEDOM, and not *Slavery*, is NATIONAL, while SLAVERY, and not *Freedom*, is SECTIONAL.

In duty to the petitioners, and with the hope of promoting their prayer, I move the reference of their petition to the Committee on the Judiciary.

A brief debate ensued, in which Messrs. Mangum, of North Carolina, Badger, of North Carolina, Hale, of New Hampshire, Clemens, of Alabama, Dawson, of Georgia, Adams, of Mississippi, Butler, of South Carolina, and Chase, of Ohio, took part; and, on motion of Mr. Badger, the memorial was laid on the table.

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THE NATIONAL FLAG THE EMBLEM OF UNION FOR FREEDOM.

LETTER TO THE BOSTON COMMITTEE FOR THE CELEBRATION OF THE 4TH OF JULY, 1852.

WASHINGTON, July 2, 1852.

DEAR SIR, — It will not be in my power to unite with my fellow-citizens of Boston in celebrating the approaching anniversary of our national independence. I venture, however, in response to the invitation with which I have been honored, to recall an incident not unworthy of remembrance, especially in our local history.

The thirteen stripes which now distinguish our national flag were first unfurled by Washington, when in command of the American forces which surrounded Boston, after the Battle of Bunker Hill, and before the Declaration of Independence. Thus early was this emblem of Union consecrated to Freedom. Our great chief at once gave to the new ensign a name which may speak to us still. In a letter, written at the time, he calls it the Union Flag, and declares why it was first displayed. His language is, that he had "*hoisted the* UNION FLAG *in compliment to the* UNITED *Colonies.*"[1] Afterwards, on the 14th of June, 1777, by a resolution of the Continental

[1] Letter to Joseph Reed, Jan. 4, 1776: Writings, ed. Sparks, Vol. III. p. 225.

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Congress, the stars and stripes were formally adopted as the flag of the *United States.*

This piece of history suggests a sentiment which I beg leave to offer.

Our National Flag. First hoisted before Boston, as the emblem of Union for the sake of Freedom. Wherever it floats, may it never fail to inspire the sentiments in which it had its origin!

I have the honor to be, dear Sir,
Your faithful servant,
CHARLES SUMNER.

Hon. BENJAMIN SEAVER, Chairman of the Committee, &c., &c.

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UNION AGAINST THE SECTIONALISM OF SLAVERY.

LETTER TO A FREE-SOIL CONVENTION AT WORCESTER, JULY 6, 1852.

THIS Convention was organized with the following officers: Hon. Stephen C. Phillips, of Salem, President, — William Davis, of Plymouth, Gershom B. Weston, of Duxbury, Edward L. Keyes, of Dedham, William B. Spooner, of Boston, John G. Palfrey, of Cambridge, John B. Alley, of Lynn, Samuel E. Sewall, of Stoneham, John W. Graves, of Lowell, John Milton Earle, of Worcester, William Jackson, of Newton, Rodolphus B. Hubbard, of Sunderland, Caleb Swan, of Easton, Joel Hayden, of Williamsburg, William M. Walker, of Pittsfield, Vice-Presidents, — Robert Carter, of Cambridge, George F. Hoar, of Worcester, S. B. Howe, of Lowell, Andrew J. Aiken, of North Adams, S. L. Gere, of Northampton, Secretaries.

The resolutions were reported by Hon. Henry Wilson.

WASHINGTON CITY, July 3, 1852.

DEAR SIR, — The true and well-tried friends of Freedom in Massachusetts are about to assemble at Worcester. It will not be in my power to be with them, to catch the contagion of their enthusiasm, to be strengthened by their determination, and to learn anew from eloquent lips the grandeur of our cause and the exigency of our duties. But I confidently look to them for trumpet words which shall again rally the country against the *sectionalism* of Slavery.

At Worcester, in 1848, commenced the first strong movement, which, gaining new force at Buffalo, and sweeping the Free States, enrolled three hundred thou-

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sand electors in constitutional opposition to a hateful wrong. The occasion now requires a similar effort. Both the old parties, with apostasy greater than that which aroused our condemnation at that time, have trampled on the Declaration of Independence, and the most cherished sentiments of the Fathers of the Republic. Even liberty of speech is threatened. It is difficult to see how any person, loyal to Freedom, and desirous of guarding it by all constitutional means, can support the national candidates of either of these parties, without surrendering the cause he professes to have at heart. Let no man expect from me any such surrender.

The two Conventions at Baltimore, by their recorded resolutions, have vied with each other in servility to Slavery. But I rejoice to believe that in both parties there are large numbers of good men who will scorn these professions. The respectable persistence in opposition to the Black Flag, which distinguished at least one of the Conventions, furnishes an earnest for the future, though Massachusetts can derive small encouragement from her delegates there. All her votes in that Convention were cast in favor of those declarations by which Slavery has received new safeguards and Freedom new restrictions.

But these efforts are doomed to disappointment. In spite of the clamors of partisans and the assumptions of the Slave Power, there is one principle which must soon prevail. It cannot be too often declared; for it is an all-sufficient basis for our political position, and an answer also to the cry of "Sectionalism," by which the prejudices of the country are ignorantly and illogically directed against us. According to the true

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spirit of the Constitution and the sentiments of the Fathers, *Freedom*, and not Slavery, is *national*, while *Slavery*, and not Freedom, is *sectional*. Though this proposition commends itself at once, and is sustained by the history of the Constitution, yet both the great parties, under the influence of the Slave Power, have reversed the true application of its terms. A *National* Whig is simply a Slavery Whig, and a *National* Democrat is simply a Slavery Democrat, in contradistinction to all who regard Slavery as a *sectional* institution, within the exclusive control of the States, and with which the Nation has nothing to do. In upholding Freedom everywhere under the *National* Government, we oppose a pernicious *sectionalism*, which falsely calls itself *national*. All this will yet be seen and acknowledged.

Amidst the difficulties and defections at the present moment, the Future is clear. Nothing can permanently obstruct Truth. But our duties increase with the occasion; nor will the generous soul be deterred by the greatness of the peril. Any such will be content to serve Freedom, to support her supporters, and to leave the result to Providence. Better be where Freedom is, though in a small minority or alone, than with Slavery, though surrounded by multitudes, whether Whigs or Democrats, contending merely for office and place.

Believe me, dear Sir, ever faithfully yours,

CHARLES SUMNER.

Hon. E. L. KEYES.

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"STRIKE, BUT HEAR": ATTEMPT TO DISCUSS THE FUGITIVE SLAVE BILL.

REMARKS IN THE SENATE, ON TAKING UP THE RESOLUTION INSTRUCTING THE COMMITTEE ON THE JUDICIARY TO REPORT A BILL FOR IMMEDIATE REPEAL OF THE FUGITIVE SLAVE ACT, JULY 27 AND 28, 1852.

MR. PRESIDENT, — I have a resolution which I desire to offer; and as it is not in order to debate it to-day, I give notice that I shall expect to call it up to-morrow, at an early moment in the morning hour, when I shall throw myself upon the indulgence of the Senate to be heard upon it.

The resolution was then read, as follows: —

"*Resolved*, That the Committee on the Judiciary be instructed to consider the expediency of reporting a bill for the immediate repeal of the Act of Congress, approved September 18, 1850, usually known as the Fugitive Slave Act."

In pursuance of this notice, on the next day, 28th July, during the morning hour, an attempt was made by Mr. Sumner to call it up, that he might present his views on Slavery.

MR. PRESIDENT, — I now ask permission of the Senate to take up the resolution which I offered yesterday. For that purpose, I move that the prior orders be postponed, and upon this motion I desire to say a word. In asking the Senate to take up this resolution for consideration, I say nothing now of its merits, nor of

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the arguments by which it may be maintained; nor do I at this stage anticipate any objection to it on these grounds. All this will properly belong to the discussion of the resolution itself, — the main question, — when it is actually before the Senate. The single question now is, not the resolution, but whether I shall be heard upon it.

As a Senator, under the responsibilities of my position, I have deemed it my duty to offer this resolution. I may seem to have postponed this duty to an inconvenient period of the session; but had I attempted it at an earlier day, I might have exposed myself to a charge of a different character. It might then have been said, that, a new-comer and inexperienced in this scene, without deliberation, hastily, rashly, recklessly, I pushed this question before the country. This is not the case now. I have taken time, and, in the exercise of my most careful discretion, at last ask the attention of the Senate. I shrink from any appeal founded on a trivial personal consideration; but should I be blamed for delay latterly, I may add, that, though in my seat daily, my bodily health for some time past, down to this very week, has not been equal to the service I have undertaken. I am not sure that it is now, but I desire to try.

And now again I say, the question is simply whether I shall be heard. In allowing me this privilege, — this right, I may say, — you do not commit yourselves in any way to the principle of the resolution; you merely follow the ordinary usage of the Senate, and yield to a brother Senator the opportunity which he craves, in the practical discharge of his duty, to express convictions dear to his heart, and dear to large numbers

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of his constituents. For the sake of these constituents, for my own sake, I now desire to be heard. Make such disposition of my resolution afterward as to you shall seem best; visit upon me any degree of criticism, censure, or displeasure; but do not refuse me a hearing. "Strike, but hear."

A debate ensued, in which Messrs. Mason, of Virginia, Brooke, of Mississippi, Charlton, of Georgia, Gwin, of California, Pratt, of Maryland, Shields, of Illinois, Douglas, of Illinois, Butler, of South Carolina, Borland, of Arkansas, and Hunter, of Virginia, took part. Objections to taking up the resolution were pressed on the ground of "want of time," "the lateness of the session," and "danger to the Union."

The question being put upon the motion by Mr. Sumner to take up his resolution, it was rejected, — Yeas 10, Nays 32, — as follows.

YEAS, — Messrs. Clarke, Davis, Dodge, of Wisconsin, Foot, Hamlin, Seward, Shields, Sumner, Upham, and Wade: — 10.

NAYS, — Messrs. Borland, Brodhead, Brooke, Cass, Charlton, Clemens, De Saussure, Dodge, of Iowa, Douglas, Downs, Felch, Fish, Geyer, Gwin, Hunter, King, Mallory, Mangum, Mason, Meriwether, Miller, Morton, Norris, Pearce, Pratt, Rusk, Sebastian, Smith, Soulé, Spruance, Toucey, and Weller: — 32.

Mr. Sumner was thus deprived of an opportunity to present his views on this important subject, and it was openly asserted that he should not present them during the pending session. Such was the pro-slavery tyranny which prevailed. He was thus driven to watch for an opportunity, when, according to the rules of the Senate, he might be heard without impediment. On one of the last days of the session it came.

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TRIBUTE TO ROBERT RANTOUL, JR.

SPEECH IN THE SENATE, ON THE DEATH OF HON. ROBERT RANTOUL, JR., AUGUST 9, 1852.

A MESSAGE was received from the House of Representatives, by Mr. Hayes, its Chief Clerk, communicating to the Senate information of the death of the Hon. ROBERT RANTOUL, JR., a member of the House of Representatives from the State of Massachusetts, and the proceedings of the House thereon.

The resolutions of the House of Representatives were read. Mr. Sumner said: —

MR. PRESIDENT, — By formal message of the House of Representatives we learn that one of our associates in the public councils is dead. Only a few brief days — I had almost said hours — have passed since he was in his accustomed seat. Now he is gone from us forever. He was my colleague and friend; and yet, so sudden has been this change, that no tidings even of his illness came to me before I learned that he was already beyond the reach of mortal aid or consolation, and that the shadows of the grave were descending upon him. He died here in Washington, late on Saturday evening, 7th August; and his earthly remains, accompanied by the bereaved companion of his life, with a Committee of the other House, are now far on the way to Massachusetts, there to mingle, dust to dust, with his natal soil.

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The occasion does not permit me to speak of Mr. Rantoul at length. A few words will suffice; nor will the language of eulogy be required.

He was born 13th August, 1805, at Beverly, in Essex County, Massachusetts, the home of Nathan Dane, final author of the immortal Ordinance by which Freedom was made a perpetual heirloom in the broad region of the Northwest. Here he commenced life under happy auspices of family and neighborhood. Here his excellent father, honored for public services, venerable also with years and flowing silver locks, yet lives to mourn a last surviving son. The sad fortune of Burke is renewed. He who should have been as posterity is to this father in the place of ancestor.

Mr. Rantoul entered the Massachusetts Legislature early, and there won his first fame. For many years he occupied a place on the Board of Education. He was also, for a time, Collector of Boston, and afterwards Attorney of the United States for Massachusetts. During a brief period he held a seat in this body. Finally, in 1851, by the choice of his native District, remarkable for intelligence and public spirit, he became a Representative in the other branch of the National Legislature. In all these spheres he performed acceptable service. And the future promised opportunities of a higher character, to which his abilities, industry, and fidelity would have responded amply. Massachusetts has many arrows in her well-stocked quiver, but few could she so ill spare at this moment as the one now irrevocably sped.

By original fitness, study, knowledge, and various experience, he was formed for public service. But he was no stranger to other pursuits. Devoted early to the

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profession of the law, he followed it with assiduity and success. In the antiquities of our jurisprudence few were more learned. His arguments at the bar were thorough; nor was his intellectual promptness in all emergencies of a trial easily surpassed. Literature, neglected by many under pressure of professional life, was with him a constant pursuit. His taste for books was enduring. He was a student always. Amidst manifold labors, professional and public, he cherished the honorable aspiration of adding to the historical productions of his country. A work on the history of France, where this great nation should be portrayed by an American pen, occupied much of his thoughts. I know not if any part was ever matured for publication.

The practice of the law, while sharpening the intellect, is too apt to cramp the faculties within the narrow limits of form, and to restrain the genial currents of the soul. On him it had no such influence. He was a Reformer. In warfare with Evil he was enlisted early and openly as a soldier for life. As such, he did not hesitate to encounter opposition, to bear obloquy, and to brave enmity. His conscience, pure as goodness, sustained him in every trial, — even that sharpest of all, the desertion of friends. And yet, while earnest in his cause, his zeal was tempered beyond that of the common reformer. He knew well the difference between the *ideal* and the *actual*, and sought, by practical means, in harmony with existing public sentiment, to promote the interests he fondly cherished. He saw that reform does not prevail at once, in an hour, or in a day, but that it is the slow and certain result of constant labor, testimony, and faith. Determined and tranquil in his own convictions, he had the grace to respect the convictions

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of others. Recognizing in the social and political system those essential elements of stability and progress, he discerned at once the offices of Conservative and Reformer. But he saw also that a blind conservatism was not less destructive than a blind reform. By mingled caution, moderation, and earnestness, he seemed often to blend two characters in one, and to be at the same time a *Reforming Conservative* and a *Conservative Reformer.*

I might speak of his devotion to public improvements of all kinds, particularly to the system of Railroads. Here he was on the popular side. There were other causes where his struggle was keener and more meritorious. At a moment when his services were much needed, he was the faithful supporter of Common Schools, the peculiar glory of New England. By word and example he sustained the cause of Temperance. Some of his most devoted labors, commencing in the Legislature of Massachusetts, were for the Abolition of Capital Punishment. Since that consummate jurist, Edward Livingston, no person has done so much, by reports, essays, letters, and speeches, to commend this reform. With its final triumph, in the progress of civilization, his name will be indissolubly connected. There is another cause that commanded his early sympathies and some of his latest best endeavors, to which, had life been spared, he would have given the splendid maturity of his powers. Posterity cannot forget this; but I am forbidden by the occasion to name it here. Sir, in the long line of portraits on the walls of the Ducal Palace at Venice, commemorating its Doges, a single panel, where a portrait should have been, is shrouded by a dark curtain. But this darkened blank, in that place, attracts the beholder

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more than any picture. Let such a curtain fall to-day upon this theme.[1]

In becoming harmony with these noble causes was the purity of his private life. Here he was blameless. In manners he was modest, simple, and retiring. In conversation he was disposed to listen rather than to speak, though all were well pleased when he broke silence and in apt language declared his glowing thought. But in the public assembly, before the people, or in the legislative hall, he was bold and triumphant. As a debater he rarely met his peer. Fluent, earnest, rapid, sharp, incisive, his words came forth like a flashing scymitar. Few could stand against him. He always understood his subject, and then, clear, logical, and determined, seeing his point before him, pressed forward with unrelenting power. His speeches on formal occasions were enriched by study, and contain passages of beauty. But he was most truly at home in dealing with practical questions arising from the actual exigencies of life.

Few had studied public affairs more minutely or intelligently. As a constant and effective member of the Democratic party, he became conspicuous by championship of its doctrines on the Currency and Free Trade. These he often discussed, and from the amplitude of his knowledge, and his overflowing familiarity with facts, statistics, and the principles of political economy, poured upon them a luminous flood. There was no topic within the wide range of national concern which did not occupy his thoughts. The resources and needs of the

[1] Slavery could not bear to be pointed at, and this slight allusion, which seemed due to the memory of Mr. Rantoul, caused irritation at the time. Hon. John Davis, the other Senator from Massachusetts, assigned as a reason for silence on the occasion, that he observed the ill-feeling of certain persons, and thought it best that the vote should be taken at once.

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West were all known to him, and Western interests were like his own. As the pioneer, resting from his daily labors, learns the death of RANTOUL, he will feel a personal grief. The fishermen on the distant Eastern coast, many of whom are dwellers in his District, will sympathize with the pioneer. These hardy children of the sea, returning in their small craft from late adventures, and hearing the sad tidings, will feel that they too have lost a friend. And well they may. During his last fitful hours of life, while reason still struggled against disease, he was anxious for their welfare. The speech which he had hoped soon to make in their behalf was then chasing through his mind. Finally, in broken utterances, he gave to them his latest earthly thoughts.

The death of such a man, so sudden, in mid-career, is well calculated to arrest attention and to furnish admonition. From the love of family, the attachment of friends, and the regard of fellow-citizens, he has been removed. Leaving behind the cares of life, the concerns of state, and the wretched strifes of party, he has ascended to those mansions where there is no strife or concern or care. At last he stands face to face in His presence whose service is perfect freedom. He has gone before. You and I, Sir, and all of us, must follow soon. God grant that we may go with equal consciousness of duty done!

I beg leave to offer the following resolutions.

Resolved, unanimously, That the Senate mourns the death of Hon. ROBERT RANTOUL, JR., late a member of the House of Representatives from Massachusetts, and tenders to his relatives a sincere sympathy in this afflicting bereavement.

Resolved, As a remark of respect to the memory of the deceased, that the Senate do now adjourn.

The resolutions were adopted, and the Senate adjourned.

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NOTE. — A monument of Italian marble was erected to the memory of Mr. Rantoul in the burial-ground at Beverly. It is an upright, four-sided shaft, on the front face of which is the following inscription, written by Mr. Sumner.

Here lies the body of
ROBERT RANTOUL, JR.,
Who was born at Beverly, 13th August, 1805,
and died at Washington, 7th August, 1852.
An upright lawyer, a liberal statesman, a good citizen,
studious of the Past, yet mindful of the Future.
Throughout an active life he strove for the
improvement of his fellow-men.
The faithful friend of Education, he upheld our Public Schools.
A lover of Virtue, he opposed Intemperance
by word and example.
In the name of Justice and Humanity, he labored
to abolish the punishment of Death.
Inspired by Freedom, he gave his professional services
to a slave hunted down by public clamor,
and bore his testimony, in Court and Congress,
against the cruel enactment which sanctioned the outrage.
He held many places of official trust and honor,
but the Good Works filling his days were above these.
Stranger! at least in something imitate him.

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AUTHORSHIP OF THE ORDINANCE OF FREEDOM IN THE NORTHWEST TERRITORY.

LETTER TO HON. EDWARD COLES, AUGUST 23, 1852.

MR. COLES has been private secretary to Mr. Jefferson, and then to Mr. Madison, and afterwards Governor of Illinois. The following extract of a letter from him to Mr. Sumner, dated Schooley's Mountain, New Jersey, August 18, 1852, raises the question of the authorship of the Ordinance of Freedom.

"Not having the pleasure of a personal acquaintance with you, I shall ask the favor of Senator Cooper to present you this, and to make me known to you, and thus explain the obligation you have placed me under, as the friend of Mr. Jefferson, to correct an error you lately made in the Senate, by which you take from him, and give to another, one of the noblest and most consistent acts of his life.

"In your speech in the Senate, on the occasion of the death of Mr. Rantoul, you spoke of Nathan Dane as the "*Author*" of the Ordinance for the government of the Territory northwest of the Ohio. With my recollection, — for I have no book or person to refer to at this summer retreat, — I could not have been more surprised, if you had designated as the author of the Declaration of Independence one of the members who added his name to it after it had been adopted by Congress."

SENATE CHAMBER, August 23, 1852.

DEAR SIR, — I have been honored by your letter of August 18th, in which you kindly criticise an allusion by me in the Senate to Nathan Dane, as the author of the Ordinance of 1787. You award this high honor to Mr. Jefferson.

Believe me, I would not take from this great patriot one of his many titles to regard. Among these, I cannot forget the early, though unsuccessful effort, to which you refer, for the prohibition of Slavery in the Territo-

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ries of the United States. But, while according to him just homage on this account, I cannot forget the crowning labors of another.

I submit to you, as beyond question, that the Ordinance of 1787, as finally adopted, was from the pen of Nathan Dane. In his great work on American Law, published in 1824, while Mr. Jefferson was yet alive, I find the following claim of authorship: "This ordinance (*formed by the author of this work*) was framed mainly from the laws of Massachusetts." [1]

In the celebrated debate of 1830, on Foot's Resolution, Mr. Webster, in his first speech, referred to the Ordinance as "drawn by Nathan Dane." [2] Afterwards, in his remarkable reply to Mr. Hayne, he vindicated at length this claim of authorship. While admitting the earlier efforts for the prohibition of Slavery in the Territories, he says: "It is no derogation from the credit, whatever that may be, of drawing the Ordinance, that its principles had before been prepared and discussed in the form of resolutions. If one should reason in that way, what would become of the distinguished honor of the author of the Declaration of Independence? There is not a sentiment in that paper which had not been voted and resolved in the Assemblies, and other popular bodies in the country, over and over again." [3]

Such, as it seems to me, is the true state of the question. To Jefferson belongs the honor of the first effort to prohibit Slavery in the Territories: to Dane belongs the honor of finally embodying this Prohibition in the Ordinance drawn by his hand in 1787.

[1] Abridgment and Digest of American Law, Vol. VII. ch. 223, art. 1, § 3.
[2] Works, Vol. III. p. 263.
[3] Ibid., p. 283.

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As this question has already been presented to the Senate in a classical debate memorable in the history of the country, it seems to me hardly advisable, at this late stage of the session, to undertake its revival. If you should continue to think that I have made an error, I shall be happy to correct it in any practicable way.

Allow me to express my sincere respect for your character, with which from childhood I have been familiar, and my gratitude for the steadfast support you have ever given to the principles of Freedom advocated by Jefferson.

remain, dear Sir, faithfully yours,

CHARLES SUMNER.

HON. EDWARD COLES.

NOTE.

THE history of the efforts for the exclusion of Slavery from the Northwest Territory is thus related by Mr. Webster, in the speeches above referred to.

"An attempt has been made to transfer from the North to the South the honor of this exclusion of Slavery from the Northwestern Territory. The Journal, without argument or comment, refutes such attempts. The cession by Virginia was made in March, 1784. On the 19th of April following, a committee, consisting of Messrs. Jefferson, Chase, and Howell, reported a plan for a temporary government of the Territory, in which was this article: 'That, after the year 1800, there shall be neither slavery nor involuntary servitude in any of the said States, otherwise than in punishment of crimes, whereof the party shall have been convicted.' Mr Spaight, of North Carolina, moved to strike out this paragraph. The question was put, according to the form then practised, 'Shall these words stand as a part of the plan?' New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, and Pennsylvania, seven States, voted in the affirmative; Maryland, Virginia, and South Carolina, in the negative. North Carolina was divided. As the consent of nine States was necessary, the words could

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not stand, and were struck out accordingly. Mr. Jefferson voted for the clause, but was overruled by his colleagues.

"In March of the next year (1785), Mr. King, of Massachusetts, seconded by Mr. Ellery, of Rhode Island, proposed the formerly rejected article, with this addition: 'And that this regulation shall be an article of compact, and remain a fundamental principle of the constitutions between the thirteen original States and each of the States described in the resolve.' On this clause, which provided the adequate and thorough security, the eight Northern States at that time voted affirmatively, and the four Southern States negatively.[1] The votes of nine States were not yet obtained, and thus the provision was again rejected by the Southern States. The perseverance of the North held out, and two years afterwards the object was attained," by the passage, on the 13th of July, 1787, with only one dissenting voice, of the "Ordinance for the Government of the Territory of the United States Northwest of the River Ohio."

"We are accustomed, Sir, to praise the lawgivers of Antiquity; we help to perpetuate the fame of Solon and Lycurgus; but I doubt whether one single law of any lawgiver, ancient or modern, has produced effects of more distinct, marked, and lasting character than the Ordinance of 1787. That instrument was drawn by Nathan Dane, then and now a citizen of Massachusetts. It was adopted, as I think I have understood, without the slightest alteration; and certainly it has happened to few men to be the authors of a political measure of more large and enduring consequence. It fixed forever the character of the population in the vast regions northwest of the Ohio, by excluding from them involuntary servitude. It impressed on the soil itself, while it was yet a wilderness, an incapacity to sustain any other than freemen. It laid the interdict against personal servitude in original compact, not only deeper than all local law, but deeper, also, than all local constitutions."

[1] More precisely, the seven Northern States, together with Maryland, affirmatively, — and four of the Southern States, namely, Virginia, North and South Carolina, and Georgia, negatively, — Delaware being unrepresented.

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FREEDOM NATIONAL, SLAVERY SECTIONAL.

SPEECH IN THE SENATE, ON A MOTION TO REPEAL THE FUGITIVE SLAVE ACT, AUGUST 26, 1852.

Nihil autem gloriosius libertate præter virtutem, si tamen libertas recte a virtute sejungitur. — JOHN OF SALISBURY.

If any man thinks that the interest of these Nations and the interest of Christianity are two separate and distinct things, I wish my soul may never enter into his secret. — OLIVER CROMWELL.

Mr. Madison thought it WRONG to admit in the Constitution the idea that there could be property in men. — *Debates in the Federal Convention*, August 25, 1787.

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"O Slave, I have bought thee." "That is thy business," he replied. "Wilt thou run away?" "That is my business," said the slave.

Arabian Proverb.

Aliæ sunt leges Cæsarum, aliæ Christi: aliud Papinianus, aliud Paulus noster præcipit.

ST. JEROME, *Epistola ad Oceanum de Morte Fabiolæ.*

If the marshal of the host bids us do anything, shall we do it, if it be against the great captain? Again, if the great captain bid us do anything, and the king or the emperor commandeth us to do another, dost thou doubt that we must obey the commandment of the king or emperor, and contemn the commandment of the great captain? Therefore, if the king or the emperor bid one thing, and God another, we must obey God, and contemn and not regard neither king nor emperor.

HENRY VIII., *Glasse of Truth.*

Si *la peste* avoit des charges, des dignités, des honneurs, des bénéfices et des pensions à distribuer, elle auroit bientôt des théologiens et des jurisconsultes qui soutiendroient qu'elle est de droit divin, et que c'est un péché de s'opposer à ses ravages

ABBÉ DE MABLY, *Droits et Devoirs du Citoyen*, Lettre II.

Cleanthes. What, to kill innocents, Sir? It cannot be.
It is no rule in justice there to punish.
Lawyer. Oh, Sir,
You understand a conscience, but not law.
Cleanthes. Why, Sir, is there so main a difference?
Lawyer. You 'll never be good lawyer, if you understand not that.
Cleanthes. I think, then, 't is the best to be a bad one.

MASSINGER, *The Old Law*, Act I. Sc. 1.

Among the assemblies of the great
A greater Ruler takes his seat;
The God of heaven as judge surveys
Those gods on earth and all their ways.

Why will ye, then, frame wicked laws?
Or why support the unrighteous cause?

ISAAC WATTS.

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When Mr. Sumner entered the Senate, he found what were known as the Compromise Measures already adopted, among which was the odious Fugitive Slave Bill. These were maintained by the constant assumption that Slavery was a national institution, entitled to the protection of the Nation, while those who opposed them were denounced as Sectionalists. These words were made to play a great part. Both the old parties, Whig and Democrat, plumed themselves upon being *national*, and one of their hardest hits at a political opponent was to charge him with *sectionalism*. Mr. Sumner undertook, while showing the unconstitutionality and offensive character of the Fugitive Slave Bill, to turn these party words upon his opponents, insisting that Slavery was Sectional and Freedom National. The title of the speech embodies this fundamental idea, which was generally adopted by the opponents of Slavery.

In making this effort Mr. Sumner had against him both the old parties, fresh from their National Conventions. The Democrats had just nominated Franklin Pierce for the Presidency, and the Whigs General Scott; but the two parties concurred on the Slavery Question, and especially in support of the Fugitive Slave Bill, which was named in both platforms.

The Democrats, in their platform, declared as follows: —

"That the Democratic party will resist all attempts at renewing, in Congress or out of it, the agitation of the Slavery question, under whatever shape or color the attempt may be made."

The Whigs, in their platform, declared as follows: —

"That . . . . we will discountenance all efforts to continue or renew such agitation, whenever, wherever, or however the attempt may be made."

Here was nothing less than a joint gag, which would have been enforced against Mr. Sumner, as it had been a few weeks before, if he had not succeeded in planting himself on a motion clearly in order, which opened the whole question. Before speaking, he was approached by several, who asked him to give up his purpose, or at least, if he spoke, not to divide the Senate. To all he replied, that, God willing,

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he should speak, and would press the question to a vote, if he were left alone. A curious parallel to this incident will be found in the Life of Sir Fowell Buxton, when this eminent Abolitionist was pressed not to bring forward in the House of Commons his motion against Slavery, and especially not to divide the House. Against the entreaties of friends, personal and political, he persevered; and this firmness of purpose was the beginning of that victory by which shortly afterwards British Emancipation was secured.[1]

From the statement in the *Globe* it appears that Mr. Sumner spoke for three hours and three quarters, when a debate ensued, in which the following Senators took part: Messrs. Clemens, of Alabama, Badger, of North Carolina, Dodge, of Iowa, Hale, of New Hampshire, Douglas, of Illinois, Weller, of California, Chase, of Ohio, Rusk, of Texas, Toucey, of Connecticut, Bradbury, of Maine, Hunter, of Virginia, James, of Rhode Island, Bright, of Indiana, Cooper, of Pennsylvania, Butler, of South Carolina, Brodhead, of Pennsylvania, Pratt, of Maryland, Mason, of Virginia, and Cass, of Michigan.

Mr. Clemens opened the debate with personal attack which is a specimen of the brutalities of Slavery; but there was no call to order. He was followed by Mr. Badger, who undertook a formal reply, but could not avoid the personalities which were so natural to speakers vindicating Slavery. He began by remarking: "I think I may say, without hazard or fear of contradiction, that the Senate of the United States never heard a more extraordinary speech than that which has just been delivered by the Senator from Massachusetts, — extraordinary in its character, and most extraordinary in the time and the occasion which the gentleman chose for its delivery. . . . . Three hours and three quarters has the gentleman occupied, at this late period of the session, with this discussion." After considering at some length the constitutionality of the Fugitive Slave Bill, especially in answer to Mr. Sumner, he proceeded to quote from the speech at Faneuil Hall (*ante*, Vol. II. pp. 398 – 424) denouncing the Fugitive Slave Bill, and then said, "I shudder, when I think of these expressions." Numerous quotations followed, and he charged upon the speech a pernicious influence on the public mind, stimulating to violence. After exposing the former speech, Mr. Badger proceeded to comment again upon that just made. "This speech, Mr. President, is well calculated to stir up the people of Massachusetts. They look to the honorable Senator for direction and guidance; they consider him a 'marvellous proper man,' and, availing himself of his influence over them, he delivers himself of such a tirade of

[1] Memoirs of Sir Thomas Fowell Buxton, by his Son, Ch. 18.

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abuse upon the law of his own country — a law passed by this very Senate, in which he knows there are many gentlemen who voted for and still support that law — as is calculated, if any one lent a moment's credence to what he says, to cover us with scorn. . . . . Does he hope to accomplish anything, except to stir up sedition at home against this law, and make the streets of Boston again the scene of disgraceful riots and lawless violence by the lawless opposers of the Constitution and laws of the United States? Never, Sir, since I have been a member of this body, has the Senate witnessed such an exhibition." Then, with a sneer at Antislavery men as of "one idea," the Senator added, that, "admitting everything they say as to the desirableness of abolishing Slavery, it is utterly impracticable."

Mr. Dodge and Mr. Douglas insisted upon the obligations under the Constitution. So did Mr. Toucey, Mr. Bradbury, Mr. Bright, and others. Mr. Cass justified his original support of the Compromise measures by his fear for the Union, saying, "To speak in ordinary language, I was almost frightened to death. . . . . I would have voted for twenty Fugitive Slave Laws, if I had believed the safety of the Union depended upon my doing so"; and then he added: "Sir, the Fugitive Slave Law is now in force. It shall never be touched, or altered, or shaken, or repealed, by any vote of mine. That is the plain English of it."

Mr. Weller imitated Mr. Clemens and Mr. Badger in personalities. He began by a confession as follows. "I will say, Sir, at the outset, that this is the first time in the course of my life that I have listened to the whole of an Abolition speech. I did not know that it was possible that I could endure a speech for over three hours upon the subject of the Abolition of Slavery. But this oration of the Senator from Massachusetts to-day has been so handsomely embellished with poetry, both Latin and English, so full of classical allusions and rhetorical flourishes, as to make it much more palatable than I supposed it could have been made." He then proceeded to say, among other things, "If the constituents of the Senator from Massachusetts follow his direction, if they obey his counsels, murder, I repeat, is inevitable; and upon your hands, Sir, ay, upon your hands [addressing Mr. SUMNER], must rest the blood of those murdered men. . . . . This forcible resistance is not only calculated to strike at the very foundation of our republican institutions by dissolving the Union, but to bring upon the head of the learned Senator from Massachusetts the blood of murdered men. He who counsels murder is himself a murderer." Here Mr. Weller followed the lead of Mr. Badger in misrepresenting the speech just made. Mr. Sumner interrupted him to say,

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"Not one word has fallen from my lips to-day, suggesting in any way a resort to force."

Mr. Sumner was not without defenders, and what they said belongs to this history. Early in the debate Mr. Hale expressed himself strongly.

"I feel that I should be doing injustice to my own feelings, and injustice to my friend, the Senator from Massachusetts, if I were to fail at this time to express the very great gratification with which I listened to his speech. In saying that, I do not mean to pass by entirely the honorable Senator from North Carolina [Mr. BADGER], for I listened to him, as I always do, with great pleasure; but justice compels me to say that by far the best part of his speech was the extract which he read from a former speech of the honorable Senator from Massachusetts. [*Laughter.*] I listened to them both with great pleasure; but, Sir, I feel bound to say to-day, that it is my deliberate conviction that the honorable Senator from Massachusetts, if he were actuated by as corrupt and selfish motives as can possibly be attributed to him, has, so far as his own personal fame and reputation are concerned, done enough by the effort he has made here to-day to place himself side by side with the first orators of antiquity, and as far ahead of any living American orator as Freedom is ahead of Slavery. I believe that he has formed to-day a new era in the history of the politics and of the eloquence of the country, and that in future generations the young men of this nation will be stimulated to effort by the record of what an American Senator has this day done, to which all the appeals drawn from ancient history would be entirely inadequate. Yes, Sir, he has to-day made a draft upon the gratitude of the friends of humanity and of liberty that will not be paid through many generations, and the memory of which shall endure as long as the English language is spoken, or the history of this Republic forms a part of the annals of the world. That, Sir, is what I believe; and if I had one other feeling, or could indulge in it, in reference to that effort, it would be a feeling of envy, that it was not in me to tread even at an humble distance in the path which he has so nobly and eloquently illustrated."

Mr. Chase adopted the argument of Mr. Sumner against the Fugitive Slave Bill, and vindicated him personally.

"The argument which my friend from Massachusetts has addressed to us to-day was not an assault upon the Constitution. It was a noble vindication of that great charter of government from the perversions of the advocates of the Fugitive Slave Act. . . . . What has the Senator from Massachusetts asserted? That the fugitive servant clause of the Constitution is a clause of compact between the

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States, and confers no legislative power upon Congress. He has arrayed history and reason in support of this proposition; and I avow my conviction, now and here, that, logically and historically, his argument is impregnable, entirely impregnable. . . . .

"Let me add, Mr. President, that in my judgment the speech of my friend from Massachusetts will mark AN ERA in American history. It will distinguish the day when the advocates of that theory of governmental policy, constitutional construction, which he has so ably defended and so brilliantly illustrated, no longer content to stand on the defensive in the contest with Slavery, boldly attacked the very citadel of its power, in that doctrine of finality which two of the political parties of the country, through their national organizations, are endeavoring to establish as the impregnable defence of its usurpations."

On the close of the debate, the proposition of Mr. Sumner was rejected by the following vote.

YEAS, — Messrs. Chase, Hale, Sumner, and Wade, — 4.

NAYS, — Messrs. Adams, Badger, Bayard, Bell, Borland, Bradbury, Bright, Brodhead, Brooke, Butler, Cass, Charlton, Clarke, Clemens, Cooper, Dawson, De Saussure, Dodge, of Iowa, Douglas, Felch, Fish, Geyer, Gwin, Hamlin, Houston, Hunter, James, Jones, of Iowa, King, Mallory, Mangum, Mason, Meriwether, Miller, Morton, Pearce, Pratt, Rusk, Shields, Smith, Soulé, Spruance, Toucey, Underwood, Upham, Walker, and Weller, — 47.

Mr. Seward was absent, — probably constrained by his prominence as a supporter of General Scott.

This speech, when published, found an extensive echo. It was circulated not only through the press, but in large pamphlet editions, amounting to several hundred thousand. It was translated into German. Two or more editions appeared in England. In the preface to the English edition of "Uncle Tom's Cabin," Lord Carlisle associated the speech with that work, and signalized "the closeness of its logic and the masculine vigor of its eloquence." Lord Shaftesbury, in a letter to the London Times, wrote, "What noble eloquence!" Mr. Combe, the phrenologist, in a letter to a distinguished American, which was published at the time, said: "I have read every word of this speech with pleasure and with pain. The pain arose from the subject, — the pleasure from sympathy with and admiration of the speaker. I have long desired to know the merits of that most cruel and iniquitous enactment, and this speech has made them clear as day."

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The London Examiner said: "Apart from its noble and affecting eloquence, it is one of the closest and most convincing arguments we have ever read on the policy of the earlier and greater, as contrasted with that of the later and meaner statesmen of America." These testimonies might be accumulated. They are introduced only so far as may be important in giving an idea of the contemporaneous reception of this speech. The title had a vogue beyond the speech itself, as it became one of the countersigns of our politics.

Letters also illustrate the speech. Mr. Seward, who was not in his seat at its delivery, wrote, on reading it: "Your speech is an admirable, a great, a very great one. That is my opinion, and everybody around me, of all sorts, confesses it." Mr. Chase wrote also: "I have read, as well as heard, your truly great speech. Hundreds of thousands will read it, and everywhere it will carry conviction to all willing to be convinced, and will infuse a feeling of incertitude and a fearful looking for judgment in the minds of those who resist the light and toil in the harness of party platforms irreconcilable with justice." Mr. Wilson, who had not yet been elected to the Senate, wrote: "I have read your glorious speech. How proud I am that God gave me the power to aid in placing you in the Senate! You have exhausted the question. Hereafter all that can be said will be to repeat your speech. It will afford to any one the most complete view of the questions in dispute of anything ever published." Hon. Stephen C. Phillips, who had taken a leading part in the Free-Soil organization of Massachusetts, wrote: "I regard it as a contribution of inestimable value to our noble cause, worth all the labor, all the time, all the self-sacrifice, and all the misrepresentation it has cost you. It is statesmanlike in all its features, and does all that is necessary to place our simple and entire design in its true light before the country, and before the world, and in the records of history." Wendell Phillips, while differing on some points, wrote: "I have read your speech with envious admiration. It is admirable, both as a masterly argument and a noble testimony, and will endear you to thousands." These extracts, which might be extended, show the response to this effort.

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SPEECH.

THURSDAY, *26th August*, 1852. — The Civil and Diplomatic Appropriation Bill being under consideration, the following amendment was moved by Mr. Hunter, of Virginia, on the recommendation of the Committee on Finance.

"That, where the ministerial officers of the United States have or shall incur extraordinary expense in executing the laws thereof, the payment of which is not specifically provided for, the President of the United States is authorized to allow the payment thereof, under the special taxation of the District or Circuit Court of the District in which the said services have been or shall be rendered, to be paid from the appropriation for defraying the expenses of the Judiciary."

MR. SUMNER seized the opportunity for which he had been waiting, and at once moved the following amendment to the amendment: —

"*Provided*, That no such allowance shall be authorized for any expenses incurred in executing the Act of September 18, 1850, for the surrender of fugitives from service or labor; which said Act is hereby repealed."

On this he took the floor, and spoke as follows.

MR. PRESIDENT, — Here is a provision for extraordinary expenses incurred in executing the laws of the United States. Extraordinary expenses! Sir, beneath these specious words lurks the very subject on which, by a solemn vote of this body, I was refused a hearing. Here it is; no longer open to the charge of being an "abstraction," but actually presented for practical legislation; not introduced by me, but by the Senator from Virginia [Mr. HUNTER], on the recommendation of an important committee of the Senate; not

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brought forward weeks ago, when there was ample time for discussion, but only at this moment, without any reference to the late period of the session. The amendment which I offer proposes to remove one chief occasion of these extraordinary expenses. Beyond all controversy or cavil it is strictly in order. And now, at last, among these final crowded days of our duties here, but at this earliest opportunity, I am to be heard, — not as a favor, but as a right. The graceful usages of this body may be abandoned, but the established privileges of debate cannot be abridged. Parliamentary courtesy may be forgotten, but parliamentary law must prevail. The subject is broadly before the Senate. By the blessing of God it shall be discussed.

Sir, a severe lawgiver of early Greece vainly sought to secure permanence for his imperfect institutions by providing that the citizen who at any time attempted their repeal or alteration should appear in the public assembly with a halter about his neck, ready to be drawn, if his proposition failed. A tyrannical spirit among us, in unconscious imitation of this antique and discarded barbarism, seeks to surround an offensive institution with similar safeguard. In the existing distemper of the public mind, and at this present juncture, no man can enter upon the service which I now undertake, without personal responsibility, such as can be sustained only by that sense of duty which, under God, is always our best support. That personal responsibility I accept. Before the Senate and the country let me be held accountable for this act and for every word which I utter.

With me, Sir, there is no alternative. Painfully convinced of the unutterable wrong and woe of Slavery, —

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profoundly believing, that, according to the true spirit of the Constitution and the sentiments of the Fathers, it can find no place under our National Government, — that it is in every respect *sectional*, and in no respect *national*, — that it is always and everywhere creature and dependant of the *States*, and never anywhere creature or dependant of the *Nation*, — and that the *Nation* can never, by legislative or other act, impart to it any support, under the Constitution of the United States, — with these convictions I could not allow this session to reach its close without making or seizing an opportunity to declare myself openly against the usurpation, injustice, and cruelty of the late intolerable enactment for the recovery of fugitive slaves. Full well I know, Sir, the difficulties of this discussion, arising from prejudices of opinion and from adverse conclusions strong and sincere as my own. Full well I know that I am in a small minority, with few here to whom I can look for sympathy or support. Full well I know that I must utter things unwelcome to many in this body, which I cannot do without pain. Full well I know that the institution of Slavery in our country, which I now proceed to consider, is as sensitive as it is powerful, possessing a power to shake the whole land, with a sensitiveness that shrinks and trembles at the touch. But while these things may properly prompt me to caution and reserve, they cannot change my duty, or my determination to perform it. For this I willingly forget myself and all personal consequences. The favor and good-will of my fellow-citizens, of my brethren of the Senate, Sir, grateful to me as they justly are, I am ready, if required, to sacrifice. Whatever I am or may be I freely offer to this cause.

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Here allow, for one moment, a reference to myself and my position. Sir, I have never been a politician. The slave of principles, I call no party master. By sentiment, education, and conviction a friend of Human Rights in their utmost expansion, I have ever most sincerely embraced the Democratic Idea, — not, indeed, as represented or professed by any party, but according to its real significance, as transfigured in the Declaration of Independence and in the injunctions of Christianity. In this idea I see no narrow advantage merely for individuals or classes, but the sovereignty of the people, and the greatest happiness of all secured by equal laws. Amidst the vicissitudes of public affairs I shall hold fast always to this idea, and to any political party which truly embraces it.

Party does not constrain me; nor is my independence lessened by any relations to the office which gives me a title to be heard on this floor. Here, Sir, I speak proudly. By no effort, by no desire of my own, I find myself a Senator of the United States. Never before have I held public office of any kind. With the ample opportunities of private life I was content. No tombstone for me could bear a fairer inscription than this: "Here lies one who, without the honors or emoluments of public station, did something for his fellowmen." From such simple aspirations I was taken away by the free choice of my native Commonwealth, and placed at this responsible post of duty, without personal obligation of any kind, beyond what was implied in my life and published words. The earnest friends by whose confidence I was first designated asked nothing from me, and throughout the long conflict which ended in my election rejoiced in the position which I most care-

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fully guarded. To all my language was uniform: that I did not desire to be brought forward; that I would do nothing to promote the result; that I had no pledges or promises to offer; that the office should seek me, and not I the office; and that it should find me in all respects an independent man, bound to no party and to no human being, but only, according to my best judgment, to act for the good of all. Again, Sir, I speak with pride, both for myself and others, when I add that these avowals found a sympathizing response. In this spirit I have come here, and in this spirit I shall speak to-day.

Rejoicing in my independence, and claiming nothing from party ties, I throw myself upon the candor and magnanimity of the Senate. I ask your attention; I trust not to abuse it. I may speak strongly, for I shall speak openly and from the strength of my convictions. I may speak warmly, for I shall speak from the heart. But in no event can I forget the amenities which belong to debate, and which especially become this body. Slavery I must condemn with my whole soul; but here I need only borrow the language of slaveholders; nor would it accord with my habits or my sense of justice to exhibit them as the impersonation of the institution — Jefferson calls it the "enormity"[1] — which they cherish. Of them I do not speak; but without fear and without favor, as without impeachment of any person, I assail this wrong. Again, Sir, I may err; but it will be with the Fathers. I plant myself on the ancient ways of the Republic, with its grandest names, its surest landmarks, and all its original altar-fires about me.

[1] Letter to Dr. Price, August 7, 1785: Memoir, Correspondence, etc., ed. Randolph, Vol. I. p. 269; Writings, Vol. I. p 377.

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And now, on the very threshold, I encounter the objection, that there is a final settlement, in principle and substance, of the question of Slavery, and that all discussion of it is closed. Both the old political parties, by formal resolutions, in recent conventions at Baltimore, have united in this declaration. On a subject which for years has agitated the public mind, which yet palpitates in every heart and burns on every tongue, which in its immeasurable importance dwarfs all other subjects, which by its constant and gigantic presence throws a shadow across these halls, which at this very time calls for appropriations to meet extraordinary expenses it has caused, they impose the rule of silence. According to them, Sir, we may speak of everything except that alone which is most present in all our minds.

To this combined effort I might fitly reply, that, with flagrant inconsistency, it challenges the very discussion it pretends to forbid. Their very declaration, on the eve of an election, is, of course, submitted to the consideration and ratification of the people. Debate, inquiry, discussion, are the necessary consequence. Silence becomes impossible. Slavery, which you profess to banish from public attention, openly by your invitation enters every political meeting and every political convention. Nay, at this moment it stalks into this Senate, crying, like the daughters of the horseleech, "Give! give!"

But no unanimity of politicians can uphold the baseless assumption, that a law, or any conglomerate of laws, under the name of Compromise, or howsoever called, is final. Nothing can be plainer than this, — that by no parliamentary device or knot can any Legislature tie the hands of a succeeding Legislature, so as to

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prevent the full exercise of its constitutional powers. Each Legislature, under a just sense of its responsibility, must judge for itself; and if it think proper, it may revise, or amend, or absolutely undo the work of any predecessor. The laws of the Medes and Persians are said proverbially to have been unalterable; but they stand forth in history as a single example where the true principles of all law have been so irrationally defied.

To make a law final, so as not to be reached by Congress, is, by mere legislation, to fasten a new provision on the Constitution. Nay, more; it gives to the law a character which the very Constitution does not possess. The wise Fathers did not treat the country as a Chinese foot, never to grow after infancy; but, anticipating progress, they declared expressly that their great Act is not final. According to the Constitution itself, there is not one of its existing provisions — not even that with regard to fugitives from labor — which may not at all times be reached by amendment, and thus be drawn into debate. This is rational and just. Sir, nothing from man's hands, nor law nor constitution, can be final. Truth alone is final.

Inconsistent and absurd, this effort is tyrannical also. The responsibility for the recent Slave Act, and for Slavery everywhere within the jurisdiction of Congress, necessarily involves the right to discuss them. To separate these is impossible. Like the twenty-fifth rule [1] of

[1] Originally the twenty-first, adopted January 28, 1840 (26th Cong. 1st Sess.), by Yeas 114, Nays 108; rescinded, on motion of John Quincy Adams, December 3 1844 (28th Cong. 2d Sess.), by Yeas 108, Nays 80. It will be observed that the vote of the opponents of the rule was precisely the same (108) on its adoption as on its abrogation. Obviously many of the original supporters or their successors withheld their votes on the latter

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the House of Representatives against petitions on Slavery, — now repealed and dishonored, — the Compromise, as explained and urged, is a curtailment of the actual powers of legislation, and a perpetual denial of the indisputable principle, that the right to deliberate is coextensive with the responsibility for an act. To sustain Slavery, it is now proposed to trample on *free speech*. In any country this would be grievous; but here, where the Constitution expressly provides against abridging freedom of speech, it is a special outrage. In vain do we condemn the despotisms of Europe, while we borrow the rigors with which they repress Liberty, and guard their own uncertain power. For myself, in no factious spirit, but solemnly and in loyalty to the Constitution, as a Senator of the United States, representing a free Commonwealth, I protest against this wrong. On Slavery, as on every other subject, I claim the right to be heard. That right I cannot, I will not abandon. "Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties":[1] these are glowing words, flashed from the soul of John Milton in his struggles with English tyranny. With equal fervor they should be echoed now by every American not already a slave.

But, Sir, this effort is impotent as tyrannical. Convictions of the heart cannot be repressed. Utterances of conscience must be heard. They break forth with irrepressible might. As well attempt to check the tides

occasion. The rule in question was in these words: "No petition, memorial, resolution, or other paper, praying the abolition of slavery in the District of Columbia, or any State or Territory, or the slave-trade between the States or Territories of the United States in which it now exists, shall be received by this House, or entertained in any way whatever."

[1] Milton. Areopagitica: A Speech for the Liberty of Unlicensed Printing: Prose Works, ed. Symmons, Vol. I. p. 325.

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of Ocean, the currents of the Mississippi, or the rushing waters of Niagara. The discussion of Slavery will proceed, wherever two or three are gathered together, — by the fireside, on the highway, at the public meeting, in the church. The movement against Slavery is from the Everlasting Arm. Even now it is gathering its forces, soon to be confessed everywhere. It may not be felt yet in the high places of office and power, but all who can put their ears humbly to the ground will hear and comprehend its incessant and advancing tread.

The relations of the National Government to Slavery, though plain and obvious, are constantly misunderstood. A popular belief at this moment makes Slavery a national institution, and of course renders its support a national duty. The extravagance of this error can hardly be surpassed. An institution which our fathers most carefully omitted to name in the Constitution, which, according to the debates in the Convention, they refused to cover with any "sanction," and which, at the original organization of the Government, was merely *sectional*, existing nowhere on the *national* territory, is now, above all other things, blazoned as national. Its supporters pride themselves as national. The old political parties, while upholding it, claim to be national. A National Whig is simply a Slavery Whig, and a National Democrat is simply a Slavery Democrat, in contradistinction to all who regard Slavery as a sectional institution, within the exclusive control of the States, and with which the nation has nothing to do.

As Slavery assumes to be national, so, by an equally strange perversion, Freedom is degraded to be sectional, and all who uphold it, under the National Constitution, are made to share this same epithet. Honest efforts to

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secure its blessings everywhere within the jurisdiction of Congress are scouted as sectional; and this cause, which the founders of our National Government had so much at heart, is called *Sectionalism*. These terms, now belonging to the commonplaces of political speech, are adopted and misapplied by most persons without reflection. But here is the power of Slavery. According to a curious tradition of the French language, Louis the Fourteenth, the Grand Monarch, by an accidental error of speech, among supple courtiers, changed the gender of a noun. But Slavery does more. It changes word for word. It teaches men to say *national* instead of *sectional*, and *sectional* instead of *national*.

Slavery national! Sir, this is a mistake and absurdity, fit to have a place in some new collection of Vulgar Errors, by some other Sir Thomas Browne, with the ancient, but exploded stories, that the toad has a gem in its head, and that ostriches digest iron. According to the true spirit of the Constitution, and the sentiments of the Fathers, *Slavery*, and not Freedom, is *sectional*, while *Freedom*, and not Slavery, is *national*. On this unanswerable proposition I take my stand, and here commences my argument.

The subject presents itself under two principal heads: first, *the true relations of the National Government to Slavery*, wherein it will appear that there is no national fountain from which Slavery can be derived, and no national power, under the Constitution, by which it can be supported. Enlightened by this general survey, we shall be prepared to consider, secondly, *the true nature of the provision for the rendition of fugitives from service*, and herein especially the unconstitutional and offensive legislation of Congress in pursuance thereof.

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I.

AND NOW for THE TRUE RELATIONS OF THE NATIONAL GOVERNMENT TO SLAVERY. These are readily apparent, if we do not neglect well-established principles.

If Slavery be national, if there be any power in the National Government to uphold this institution,—as in the recent Slave Act,—it must be by virtue of the Constitution. Nor can it be by mere inference, implication, or conjecture. According to the uniform admission of courts and jurists in Europe, again and again promulgated in our country, Slavery can be derived only from clear and special recognition. "The state of Slavery," said Lord Mansfield, pronouncing judgment in the great case of Sommersett, "is of such a nature, that it is incapable of being introduced on any reasons, moral or political, *but only by positive law*. . . . . It is so odious, that *nothing can be suffered to support it* but POSITIVE LAW."[1] And a slaveholding tribunal,—the Supreme Court of Mississippi,—adopting the same principle, has said:—

"Slavery is condemned by reason and the Laws of Nature. It exists, and can *only* exist, through municipal regulations."[2]

And another slaveholding tribunal—the Court of Appeals of Kentucky—has said:—

"We view this as a right existing by *positive law* of a municipal character, without foundation in the Law of Nature or the unwritten and Common Law."[3]

Of course every power to uphold Slavery must have

[1] Howell's State Trials, Vol. XX. col. 82.
[2] Harry et al. *v.* Decker et al., Walker, 42.
[3] Rankin *v.* Lydia, 2 Marshall, 470.

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an origin as distinct as that of Slavery itself. Every presumption must be as strong against such a power as against Slavery. A power so peculiar and offensive, so hostile to reason, so repugnant to the Law of Nature and the inborn Rights of Man, — which despoils its victim of the fruits of labor, — which substitutes concubinage for marriage, — which abrogates the relation of parent and child, — which, by denial of education, abases the intellect, prevents a true knowledge of God, and murders the very soul, — which, amidst a plausible physical comfort, degrades man, created in the divine image, to the state of a beast, — such a power, so eminent, so transcendent, so tyrannical, so unjust, can find no place in any system of Government, unless by virtue of *positive sanction*. It can spring from no doubtful phrase. It must be declared by unambiguous words, incapable of a double sense.

Slavery, I repeat, is not mentioned in the Constitution. The name Slave does not pollute this Charter of our Liberties. No "positive" language gives to Congress any *power* to make a slave or to hunt a slave. To find even any seeming sanction for either, we must travel, with doubtful footstep, beyond express letter, into the region of interpretation. But here are rules which cannot be disobeyed. With electric might for Freedom, they send a pervasive influence through every provision, clause, and word of the Constitution. Each and all make Slavery impossible as a national institution. They shut off from the Constitution every fountain out of which it can be derived.

First, and foremost, is the *Preamble*. This discloses the prevailing objects and principles of the Constitution. This is the vestibule through which all must

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pass who would enter the sacred temple. Here are the inscriptions by which they are earliest impressed. Here is first seen the genius of the place. Here the proclamation of Liberty is soonest heard. "We, the People of the United States," says the Preamble, "in order to form a more perfect Union, *establish justice*, insure domestic tranquillity, provide for the common defence, *promote the general welfare, and secure the blessings of Liberty* to ourselves and our posterity, do ordain and establish this Constitution for the United States of America." Thus, according to undeniable words, the Constitution was ordained, not to establish, secure, or sanction Slavery, — not to promote the special interests of Slaveholders, — not to make Slavery national, in any way, form, or manner, — but to "establish justice," "promote the general welfare," and "secure the blessings of Liberty." Here, surely, Liberty is national.

Secondly. Next to the Preamble in importance are the explicit *contemporaneous declarations* in the Convention which framed the Constitution, and elsewhere, expressed in different forms of language, but all tending to the same conclusion. By the Preamble the Constitution speaks for Freedom. By these declarations the Fathers speak as the Constitution speaks. Early in the Convention, Gouverneur Morris, of Pennsylvania, broke forth in the language of an Abolitionist: "*He never would concur in upholding domestic slavery.* It was a nefarious institution. It was the curse of Heaven on the States where it prevailed."[1] These positive words, in harmony with other things from the same quarter, show a vehement determination that Slavery should not be national.

[1] Madison's Debates, August 8, 1787.

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At a later day a discussion ensued on the clause touching the African slave-trade, which reveals the definitive purposes of the Convention. From the report of Mr. Madison we learn what was said. Oliver Ellsworth, of Connecticut, said: "The morality or wisdom of Slavery are considerations belonging to the States themselves."[1] According to him, Slavery was sectional. Elbridge Gerry, of Massachusetts, "thought we had nothing to do with the conduct of the States as to slaves, *but ought to be careful not to give any sanction to it.*"[2] According to him, Slavery is sectional, and he would not make it national. Roger Sherman, of Connecticut, "was opposed to a tax on slaves imported, as making the matter worse, *because it implied they were property.*"[3] He would not have Slavery national. After debate, the subject was referred to a committee of eleven, who reported a substitute, authorizing "a tax or duty on such migration or importation, at a rate *not exceeding the average of the duties laid on imports.*"[4] This language, classifying *persons* with merchandise, seemed to imply a recognition that they were *property.* Mr. Sherman at once declared himself "against this part, *as acknowledging men to be property,* by taxing them as such under the character of slaves."[5] Mr. Gorham "thought that Mr. Sherman should consider the duty, *not as implying that slaves are property,* but as a discouragement to the importation of them."[6] Mr. Madison, in mild juridical phrase, "*thought it wrong to admit in the Constitution the idea that there could be property in men.*"[7] After discussion it was finally agreed to make the clause read:—

[1] Madison's Debates, Aug. 21, 1787.
[2] Ibid., Aug 22.
[3] Ibid.
[4] Ibid., Aug. 24.
[5] Ibid., Aug. 25.
[6] Ibid.
[7] Ibid.

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"But a tax or duty may be imposed on such importation, not exceeding ten dollars *for each person.*"[1]

The difficulty seemed then to be removed, and the whole clause was adopted. This record demonstrates that the word "persons" was employed to show that slaves, everywhere under the Constitution, are always to be regarded as *persons*, and not as *property*, and thus to exclude from the Constitution all idea that there can be property in man. Remember well, that Mr. Sherman was opposed to the clause in its original form, "as acknowledging men to be *property*," — that Mr. Madison was also opposed to it, because he "thought it *wrong* to admit in the Constitution the idea that there could be property in men," — and that, after these objections, the clause was so amended as to exclude the idea. But Slavery cannot be national, unless this idea is distinctly and unequivocally admitted into the Constitution.

The evidence still accumulates. At a later day in the proceedings of the Convention, as if to set the seal upon the solemn determination to have no sanction of Slavery in the Constitution, the word "servitude," which appeared in the clause on the apportionment of representatives and taxes was struck out, and the word "service" inserted. This was done by unanimous vote, on the motion of Mr. Randolph, of Virginia; and the reason assigned for this substitution, according to Mr. Madison, in his authentic report of the debate, was, that "the former was thought to express the condition of slaves, and the latter *the obligations of free persons.*"[2] With such care was Slavery excluded from the Constitution.

[1] Madison's Debates, Aug. 25.
[2] Ibid., Sept. 13.

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Nor is this all. In the Massachusetts Convention, to which the Constitution, when completed, was submitted for ratification, a veteran of the Revolution, General Heath, openly declared, that, according to his view, Slavery was sectional, and not national. His language was pointed. "I apprehend," he said, "that it is not in our power *to do anything for or against those who are in slavery in the Southern States.* No gentleman within these walls detests every idea of Slavery more than I do; it is generally detested by the people of this Commonwealth; and I ardently hope that the time will soon come when our brethren in the Southern States will view it as we do, and put a stop to it; but to this we have no right to compel them. Two questions naturally arise: *If we ratify the Constitution, shall we do anything by our act to hold the blacks in slavery? or shall we become partakers of other men's sins? I think neither of them.*"[1]

Afterwards, in the first Congress under the Constitution, on a motion, much debated, for a duty on the importation of slaves, the same Roger Sherman, who in the National Convention opposed the idea of property in man, authoritatively exposed the true relations of the Constitution to Slavery. His language was, that "the Constitution does not consider these persons as a species of property; it speaks of them as persons."[2]

Thus distinctly and constantly, from the very lips of the framers of the Constitution, we learn the falsehood of recent assumptions in favor of Slavery and in derogation of Freedom.

[1] Debates, Resolutions, etc., of the Convention of Massachusetts, January 30, 1788.

[2] Annals of Congress, 1st Cong. 1st Sess., col. 842.

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Thirdly. According to a familiar rule of interpretation, all laws concerning the same matter, *in pari materia*, are to be construed together. By the same reason, *the grand political acts of the Nation are to be construed together*, giving and receiving light from each other. Earlier than the Constitution was the Declaration of Independence, embodying, in immortal words, those primal truths to which our country pledged itself with baptismal vows as a Nation. "We hold these truths to be self-evident," says the Nation: "that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, *liberty*, and the pursuit of happiness; that to secure these rights governments are instituted among men, deriving their just powers from the consent of the governed." But this does not stand alone. There is another national act of similar import. On the successful close of the Revolution, the Continental Congress, in an Address to the States, repeated the same lofty truth. "Let it be remembered," said the Nation again, "that it has ever been the pride and boast of America, *that the rights for which she contended were the rights of human nature.* By the blessing of the Author of *these rights* on the means exerted for their defence, they have prevailed against all opposition, and FORM THE BASIS of thirteen independent States."[1] Such were the acts of the Nation in its united capacity. Whatever may be the privileges of States in their individual capacities, within their several local jurisdictions, no power can be attributed to the Nation, in the absence of positive, unequivocal grant, inconsistent with these two national declarations. Here, Sir, is the national heart,

[1] Journal of Congress, April 26, 1783, Vol. VIII. p. 201.

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the national soul, the national will, the national voice, which must inspire our interpretation of the Constitution, entering into all the national legislation and spreading through all its parts. Thus again is Freedom national.

Fourthly. Beyond these is a principle of the Common Law, clear and indisputable, a supreme rule of interpretation, from which in this case there can be no appeal. In any question under the Constitution *every word must be construed in favor of Liberty.* This rule, which commends itself to the natural reason, is sustained by time-honored maxims of early jurisprudence. Blackstone aptly expresses it, when he says that "the law is always ready to catch at anything in favor of Liberty."[1] The rule is repeated in various forms. *Favores ampliandi sunt; odia restringenda:* "Favors are to be amplified; hateful things to be restrained." *Lex Angliæ est lex misericordiæ:* "The law of England is a law of mercy." *Angliæ jura in omni casu Libertati dant favorem:* "The laws of England in every case show favor to Liberty." And this sentiment breaks forth in natural, though intense force, in the maxim, *Impius et crudelis judicandus est qui Libertati non favet:* "He is to be adjudged impious and cruel who does not favor Liberty." Reading the Constitution in the admonition of these rules, Freedom, again I say, is national.[2]

[1] Commentaries, Vol. II p. 94.

[2] These maxims are enforced with beautiful earnestness in a tract which appeared at Baltimore shortly after the adoption of the Constitution, with the following title-page: "Letter from Granville Sharp, Esq., of London, to the Maryland Society for Promoting the Abolition of Slavery and the Relief of Free Negroes and others unlawfully held in Bondage. Published by Order of the Society. Baltimore: Printed by D. Graham, L. Yundt, and W. Patton, in Calvert Street, near the Court-House. M.DCC.XCIII."

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Fifthly. From a learned judge of the Supreme Court of the United States, in an opinion of the Court, we derive the same lesson. In considering the question, whether a State can prohibit the importation of slaves as merchandise, and whether Congress, in the exercise of its power to regulate commerce among the States, can interfere with the slave-trade between the States, a principle was enunciated, which, while protecting the trade from any intervention of Congress, declares openly that the Constitution acts upon no man as property. Mr. Justice McLean says: "If slaves are considered in some of the States as merchandise, that cannot divest them of the leading and controlling quality of persons, by which they are designated in the Constitution. The character of property is given them by the local law. This law is respected, and all rights under it are protected, by the Federal authorities; *but the Constitution acts upon slaves as* PERSONS, *and not as property.* . . . . The power over Slavery belongs to the States respectively. It is local in its character, and in its effects."[1] Here again Slavery is sectional, while Freedom is national.

Sir, such, briefly, are the rules of interpretation, which, as applied to the Constitution, fill it with the breath of Freedom,—

"Driving far off each thing of sin and guilt."[2]

To the *history and prevailing sentiments* of the times we may turn for further assurance. In the spirit of Freedom the Constitution was formed. In this spirit our fathers always spoke and acted. In this spirit the

[1] Groves et al. *v.* Slaughter, 15 Peters, 507, 508.
[2] Milton, Comus, 456.

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National Government was first organized under Washington. And here I recall a scene, in itself a touchstone of the period, and an example for us, upon which we may look with pure national pride, while we learn anew the relations of the National Government to Slavery.

The Revolution was accomplished. The feeble Government of the Confederation passed away. The Constitution, slowly matured in a National Convention, discussed before the people, defended by masterly pens, was adopted. The Thirteen States stood forth a Nation, where was unity without consolidation, and diversity without discord. The hopes of all were anxiously hanging upon the new order of things and the mighty procession of events. With signal unanimity Washington was chosen President. Leaving his home at Mount Vernon, he repaired to New York, — where the first Congress had commenced its session, — to assume his place as elected Chief of the Republic. On the 30th of April, 1789, the organization of the Government was completed by his inauguration. Entering the Senate Chamber, where the two Houses were assembled, he was informed that they awaited his readiness to receive the oath of office. Without delay, attended by the Senators and Representatives, with friends and men of mark gathered about him, he moved to the balcony in front of the edifice. A countless multitude, thronging the open ways, and eagerly watching this great espousal,

> "With reverence look on his majestic face,
> Proud to be less, but of his godlike race." [1]

The oath was administered by the Chancellor of New

[1] Dryden, Epistle XVI. [XIV.], To Sir Godfrey Kneller.

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York. At such time, and in such presence, beneath the unveiled heavens, Washington first took this vow upon his lips: "I do solemnly swear that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States."

Over the President, on this new occasion, floated the national flag, with its stripes of red and white, its stars on a field of blue. As his patriot eye rested upon the glowing ensign, what currents must have rushed swiftly through his soul! In the early days of the Revolution, in those darkest hours about Boston, after the Battle of Bunker Hill, and before the Declaration of Independence, the thirteen stripes had been first unfurled by him, as the emblem of Union among the Colonies for the sake of Freedom. By him, at that time, they had been named the Union Flag. Trial, struggle, and war were now ended, and the Union, which they first heralded, was unalterably established. To every beholder these memories must have been full of pride and consolation. But, looking back upon the scene, there is one circumstance which, more than all its other associations, fills the soul, — more even than the suggestions of Union, which I prize so much. AT THIS MOMENT, WHEN WASHINGTON TOOK HIS FIRST OATH TO SUPPORT THE CONSTITUTION OF THE UNITED STATES, THE NATIONAL ENSIGN, NOWHERE WITHIN THE NATIONAL TERRITORY, COVERED A SINGLE SLAVE. Then, indeed, was Slavery Sectional, and Freedom National.

On the sea an execrable piracy, the trade in slaves, to the national scandal, was still tolerated under the national flag. In the States, as a sectional institution, beneath the shelter of local laws, Slavery unhappily

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found a home. But in the only territories at this time belonging to the nation, the broad region of the Northwest, it was already made impossible, by the Ordinance of Freedom, even before the adoption of the Constitution. The District of Columbia, with its Fatal Dowry, was not yet acquired.

The government thus organized was Antislavery in character. Washington was a slaveholder, but it would be unjust to his memory not to say that he was an Abolitionist also. His opinions do not admit of question. Only a short time before the formation of the National Constitution, he declared, by letter, that it was "among his first wishes to see some plan adopted by which Slavery in this country might be abolished by law";[1] and again, in another letter, that, in support of any legislative measure for the abolition of Slavery, his suffrage should "never be wanting";[2] and still further, in conversation with a distinguished European Abolitionist, a travelling propagandist of Freedom, Brissot de Warville, recently welcomed to Mount Vernon, he openly announced, that, to promote this object in Virginia, "he desired the formation of a SOCIETY, and that he would second it."[3] By this authentic testimony he takes his place with the early patrons of Abolition Societies.

By the side of Washington, as, standing beneath the national flag, he swore to support the Constitution, were illustrious men, whose lives and recorded words now

[1] Letter to John F. Mercer, September 9, 1786: Writings, ed. Sparks, Vol. IX. p. 159, note.

[2] Letter to Robert Morris, April 12, 1786: Writings, ed. Sparks, Vol. IX. p. 159.

[3] Brissot de Warville, New Travels in the United States, 2d ed., Vol. I. pp. 246, 247.

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rise in judgment. There was John Adams, the Vice-President, great vindicator and final negotiator of our national independence, whose soul, flaming with Freedom, broke forth in the early declaration, that "consenting to Slavery is a sacrilegious breach of trust,"[1] and whose immitigable hostility to this wrong is immortal in his descendants. There also was a companion in arms and attached friend, of beautiful genius, the yet youthful and "incomparable" Hamilton, — fit companion in early glories and fame with that darling of English history, Sir Philip Sidney, to whom the latter epithet has been reserved, — who, as member of the Abolition Society of New York, had recently united in a solemn petition for those who, though "*free by the laws of God*, are held in Slavery *by the laws of this State.*"[2] There, too, was a noble spirit, of spotless virtue, the ornament of human nature, who, like the sun, ever held an unerring course, — John Jay. Filling the important post of Secretary for Foreign Affairs under the Confederation, he found time to organize the "Society for Promoting the Manumission of Slaves" in New York, and to act as its President, until, by the nomination of Washington, he became Chief Justice of the United States. In his sight Slavery was an "iniquity," "a sin of crimson dye," against which ministers of the Gospel should testify, and which the Government should seek in every way to abolish. "Till America comes into this measure," he wrote, "her prayers to Heaven for liberty will be impious. This is a strong expression, but it is just. Were I in your Legislature, I would prepare a

[1] Dissertation on the Canon and Feudal Law: Works, Vol. III. p. 463.

[2] Life and Writings of John Jay, Vol. I. p. 231. Slavery and Anti-Slavery, by William Goodell, p. 97.

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bill for the purpose with great care, and I would never cease moving it till it became a law or I ceased to be a member."[1] Such words as these, fitly coming from our leaders, belong to the true glories of the country: —

> "While we such precedents can boast at home,
> Keep thy Fabricius and thy Cato, Rome!"

They stood not alone. The convictions and earnest aspirations of the country were with them. At the North these were broad and general. At the South they found fervid utterance from slaveholders. By early and precocious efforts for "total emancipation," the author of the Declaration of Independence placed himself foremost among the Abolitionists of the land. In language now familiar to all, and which can never die, he perpetually denounced Slavery. He exposed its pernicious influence upon master as well as slave, declared that the love of justice and the love of country pleaded equally for the slave, and that "the abolition of domestic slavery was the greatest object of desire." He believed that "the sacred side was gaining daily recruits," and confidently looked to the young for the accomplishment of this good work.[2] In fitful sympathy with Jefferson was another honored son of Virginia, the Orator of Liberty, Patrick Henry, who, while confessing that he was a master of slaves, said: "I will not, I cannot justify it. However culpable my conduct, I will so far pay my devoir to Virtue as to own the excellence and rectitude of her precepts, and lament my want of con-

[1] Life and Writings, Vol. I. pp. 229, 230.

[2] Notes on Virginia, Query XVIII.: Writings, Vol. VIII. pp. 403, 404. Summary View of the Rights of British America: American Archives, 4th Ser. Vol. I. col 696; Writings, Vol. I. p. 185. Letter to Dr. Price, August 7, 1785: Writings, Vol. I. p. 377.

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formity to them."[1] At this very period, in the Legislature of Maryland, on a bill for the relief of oppressed slaves, a young man, afterwards by consummate learning and forensic powers acknowledged head of the American bar, William Pinkney, in a speech of earnest, truthful eloquence, — better for his memory than even his professional fame, — branded Slavery as "iniquitous and most dishonorable," "founded in a disgraceful traffic," "its continuance as shameful as its origin"; and he openly declared, that "by the eternal principles of natural justice, no master in the State has a right to hold his slave in bondage for a single hour."[2]

Thus at that time spoke the NATION. The CHURCH also joined its voice. And here, amidst diversities of religious faith, it is instructive to observe the general accord. Quakers first bore their testimony. At the adoption of the Constitution, their whole body, under the early teaching of George Fox, and by the crowning exertions of Benezet and Woolman, had become an organized band of Abolitionists, penetrated by the conviction that it was unlawful to hold a fellow-man in bondage. Methodists, numerous, earnest, and faithful, never ceased by their preachers to proclaim the same truth. Their rules in 1788 denounced, in formal language, "the buying or selling the bodies and souls of men, women, or children, with an intention to enslave them."[3] The words of their great apostle, John Wesley, were constantly repeated. On the eve of the National Conven-

[1] Letter to Robert Pleasants, January 18, 1779: Goodloe's Southern Platform, p. 79.

[2] Speeches in the House of Delegates of Maryland in 1788 and 1789: Wheaton's Life of Pinkney, p. 11; American Museum for 1789, Vol. VI. p. 75.

[3] Bangs's History of the Methodist Episcopal Church in the United States, Vol. I. pp. 213, 218.

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tion, that burning tract was circulated in which he exposes American Slavery as "vilest" of the world, — "such slavery as is not found among the Turks at Algiers"; and after declaring "Liberty the right of every human creature," of which "no human law can deprive him," he pleads, "If, therefore, you have any regard to justice (to say nothing of mercy, nor the revealed law of God), render unto all their due. Give liberty to whom liberty is due, — that is, to every child of man, to every partaker of human nature."[1] At the same time the Presbyterians, a powerful religious body, inspired by the principles of John Calvin, in more moderate language, but by a public act, recorded their judgment, recommending "to all their people to use the most prudent measures, consistent with the interest and the state of civil society in the counties where they live, *to procure eventually the final abolition of Slavery in America.*"[2] The Congregationalists of New England, also nurtured in the faith of John Calvin, and with the hatred of Slavery belonging to the great Nonconformist, Richard Baxter, were sternly united against this wrong. As early as 1776, Samuel Hopkins, their eminent leader and divine, published his tract showing it to be the Duty and Interest of the American Colonies to emancipate all their African slaves, and declaring that Slavery is "in every instance wrong, unrighteousness, and oppression, — a very great and crying sin, — there being nothing of the kind equal to it on the face of the earth."[3] And in 1791, shortly after the adoption of the Constitution, the second Jonathan Edwards, a twice-

[1] Thoughts upon Slavery, by John Wesley, (London, 1774,) pp. 24, 27.

[2] Minutes of the Synod of New York and Philadelphia, 1787: Records of the Presbyterian Church in the United States, p. 540.

[3] A Dialogue concerning the Slavery of the Africans: Works, Vol. II. p. 552.

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honored name, in an elaborate discourse often published, called upon his country, in "the present blaze of light" on the injustice of Slavery, to "prepare the way for its total abolition." This he gladly thought at hand. "If we judge of the future by the past," said the celebrated preacher, "within fifty years from this time it will be as shameful for a man to hold a negro slave as to be guilty of common robbery or theft."[1]

Thus, at this time, the Church, in harmony with the Nation, by its leading denominations, Quakers, Methodists, Presbyterians, and Congregationalists, thundered against Slavery. The COLLEGES were in unison with the Church. Harvard University spoke by the voice of Massachusetts, which already had abolished Slavery. Dartmouth College, by one of its learned Professors, claimed for the slaves "an equal standing, in point of privileges, with the whites."[2] Yale College, by its President, the eminent divine, Ezra Stiles, became the head of the Abolition Society of Connecticut.[3] And the University of William and Mary, in Virginia, at this very time testified its sympathy with the cause by conferring upon Granville Sharp, the acknowledged chief of British Abolitionists, the honorary degree of Doctor of Laws.[4]

The LITERATURE of the land, such as then existed, agreed with the Nation, the Church, and the College.

[1] The Injustice and Impolicy of the Slave-Trade, and of the Slavery of the Africans, (Providence, 1792,) pp. 27 – 30.

[2] Tyrannical Liberty-Men: A Discourse on Negro Slavery in the United States, February 19, 1795, by Moses Fiske, Tutor in Dartmouth College. American Quarterly Register, May, 1840. Weld, Power of Congress over the District of Columbia, p. 33.

[3] Kingsley's Life of Stiles: Sparks's American Biography, Second Series, Vol. VI. p. 69.

[4] Hoare's Memoirs of Sharp, p. 254. Weld's Power of Congress, p. 34.

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Franklin, in the last literary labor of his life,[1] — Jefferson, in his "Notes on Virginia," — Barlow, in his heroic verse, — Rush, in a work which inspired the praise of Clarkson,[2] — the ingenious author of the "Algerine Captive," the earliest American novel, and, though now but little known, one of the earliest American books republished in London, — were all moved by the contemplation of Slavery. "If our fellow-citizens in the Southern States are deaf to the pleadings of Nature," exclaims the last earnestly, "I will conjure them, for the sake of consistency, to cease to deprive their fellow-creatures of freedom, which their writers, their orators, representatives, senators, and even their Constitutions of Government, have declared to be the unalienable birthright of man."[3] A female writer and poet, earliest in our country among the graceful throng, Sarah Wentworth Morton, at the very period of the National Convention, admired by the polite society in which she lived, poured forth her sympathies also. The generous labors of John Jay in behalf of the crushed African inspired her muse; and in another poem, commemorating a slave who fell while vindicating his freedom, she rendered a truthful homage to his inalienable rights, in words which I now quote as testimony of the times: —

> "Does not the voice of Reason cry,
> 'Claim the first right that Nature gave,
> From the red scourge of bondage fly,
> Nor deign to live a burdened slave'?"[4]

[1] Speech of Sidi Mehemet Ibrahim in the Divan of Algiers against granting the Petition of the Sect called Erika, or Purists, for the Abolition of Piracy and Slavery: Works, ed. Sparks, Vol. II. pp. 517 – 521.

[2] An Address to the Inhabitants of the British Settlements on the Slavery of the Negroes. Clarkson's History of the Abolition of the African Slave-Trade, Vol. I. p. 152.

[3] Algerine Captive, Vol. I p. 213.

[4] The African Chief: My Mind and its Thoughts, p. 201.

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Such, Sir, at the adoption of the Constitution and the first organization of the National Government, was the outspoken, unequivocal heart of the country. Slavery was abhorred. Like the slave-trade, it was regarded as transitory; and by many it was supposed that they would disappear together. As the oracles grew mute at the coming of Christ, and a voice was heard, crying to mariners at sea, "Great Pan is dead!" so at this time Slavery became dumb, and its death seemed to be near. Voices of Freedom filled the air. The patriot, the Christian, the scholar, the writer, the poet, vied in loyalty to this cause. All were Abolitionists.

The earliest Congress under the Constitution attests this mood. One of its first acts was to accept the Ordinance of Freedom for the Northwestern Territory, thus ratifying the prohibition of Slavery in all *existing* territory. It is impossible to exaggerate the importance of this act as a national landmark, especially when we consider that on the list of those who sanctioned it were men fresh from the National Convention, and therefore familiar with the Constitution which it framed. The same Congress entertained the question of Slavery in other forms, — sometimes on memorials duly presented, and then again in debate. Virginia was heard by her Abolition Society denouncing Slavery as "not only an odious degradation, but an outrageous violation of one of the most essential rights of human nature, and utterly repugnant to the precepts of the Gospel."[1] There was another petitioner, whose illustrious services at home and abroad entitled him to speak with authority rather than with prayer. It was none other than Benjamin Franklin. After a long life of various effort, — repre-

[1] Weld, Power of Congress over the District of Columbia, p. 29.

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senting his country in England during the controversies that preceded the Revolution, — returning to take his great part in the Declaration of Independence, — then representing his country in its European negotiations, — then again returning to take his great part in the formation of the National Constitution, while all the time his life was elevated by philosophy and the peculiar renown he had won, — this Apostle of Liberty, recognized as such in the two hemispheres, whose name was signed to the Declaration of Independence, was signed to the Treaty of Alliance with France, was signed to the Treaty of Independence with Great Britain, was signed to the National Constitution, now set this same name to another instrument, a simple petition to Congress. At the age of eighty-four, venerable with years, and with all the honors of philosophy, diplomacy, and statesmanship, — a triple crown never before enjoyed, — the patriot sage comes forward, as President of the Abolition Society of Pennsylvania, and entreats Congress "that it would be pleased to countenance the restoration of Liberty to those unhappy men who alone in this land of Freedom are degraded into perpetual bondage," — and then again, in concluding words, "that it would *step to the very verge of the power vested in it for discouraging every species of traffic in the persons of our fellom-men.*"[1] Shortly after this prayer the petitioner descended to his tomb, from which he still prays that Congress *will step to the very verge of the power vested in it to* DISCOURAGE *Slavery;* and this prayer, in simple words, proclaims the National policy of the Fathers. Not encouragement, but discouragement of Slavery, — not its *nationalization*, but its *denationalization*, was their rule.

[1] Annals of Congress, 1st Cong. 2d Sess., col. 1198.

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Sir, enough has been said to show the sentiment which, like a vital air, surrounded the National Government as it stepped into being. In the face of this history, and in the absence of any positive sanction, it is absurd to suppose that Slavery, which under the Confederation had been merely sectional, was now constituted national. Our fathers did not say, with the apostate angel, "Evil, be thou my good!" In different spirit they cried out to Slavery, "Get thee behind me, Satan!"

There is yet another link. In the discussions which took place in the local conventions on the adoption of the Constitution, a sensitive desire was manifested to surround all persons under the Constitution with additional safeguards. Fears were expressed, from the supposed indefiniteness of some of the powers conceded to the National Government, and also from the absence of a Bill of Rights. Massachusetts, on ratifying the Constitution, proposed a series of amendments, at the head of which was this, characterized by Samuel Adams, in the Convention, as "A Summary of a Bill of Rights": —

"That it be explicitly declared, that all powers not expressly delegated by the aforesaid Constitution are reserved to the several States, to be by them exercised."[1]

New Hampshire, New York, Rhode Island, Virginia, South Carolina, and North Carolina, with minorities in Pennsylvania and Maryland, united in this proposition. In pursuance of these recommendations, the First Congress presented for adoption the following article, which, being ratified by the proper number of States, became part of the Constitution as the Tenth Amendment: —

[1] Debates, etc, of the Massachusetts Convention, February 1 and 6, 1788. Elliot's Debates, Vol IV. p. 211

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"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Stronger words could not be employed to limit the power under the Constitution, and to protect the people from all assumptions of the National Government, *particularly in derogation of Freedom.* Its guardian character commended it to the sagacious mind of Jefferson, who said: "I consider the foundation of the Constitution as laid on this ground."[1] And Samuel Adams, ever watchful for Freedom, said: "It removes a doubt which many have entertained respecting this matter, and gives assurance, that, *if any law made by the Federal Government shall be extended beyond the power granted by the proposed Constitution,* and inconsistent with the Constitution of this State, it will be an error, and adjudged by the courts of law to be void."[2]

Beyond all question, the National Government, ordained by the Constitution, is not general or universal, but special and particular. It is a government of limited powers. It has no power which is not delegated. Especially is this clear with regard to an institution like Slavery. The Constitution contains no power to make a king, or to support kingly rule. With similar reason it may be said, that it contains no power to make a slave, or to support a system of Slavery. The absence of all such power is hardly more clear in the one case

[1] Opinion against the Constitutionality of a National Bank, Feb. 15, 1791: Memoir, Correspondence, etc., Vol. IV. p. 523; Writings, Vol. VII. p. 556. See also Letter to Judge Johnson, June 12, 1823: Memoir, Correspondence, etc., Vol. IV. p. 374; Works, Vol. VII. p. 297.

[2] Debates, etc., of the Massachusetts Convention, February 1, 1788. See also Life of Samuel Adams, by William V. Wells, Vol. III. pp. 271, 272, 325, 331.

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than in the other. But if there be no such power, all national legislation upholding Slavery must be unconstitutional and void. The stream cannot be higher than the fountain-head. Nay, more, *nothing can come out of nothing;* the stream cannot exist, if there be no spring from which it is fed.

At the risk of repetition, but for the sake of clearness, review now this argument, and gather it together. Considering that Slavery is of such an offensive character that it can find sanction only in "positive law," and that it has no such "positive" sanction in the Constitution, — that the Constitution, according to its Preamble, was ordained to "establish justice" and "secure the blessings of liberty," — that, in the Convention which framed it, and also elsewhere at the time, it was declared not to sanction Slavery, — that, according to the Declaration of Independence, and the Address of the Continental Congress, the Nation was dedicated to "Liberty," and the "rights of human nature," — that, according to the principles of the Common Law, the Constitution must be interpreted openly, actively, and perpetually for Freedom, — that, according to the decision of the Supreme Court, it acts upon slaves, *not as property,* but as PERSONS, — that, at the first organization of the National Government under Washington, Slavery had no national favor, existed nowhere on the national territory, beneath the national flag, but was openly condemned by Nation, Church, Colleges, and Literature of the time, — and, finally, that, according to an Amendment of the Constitution, the National Government can exercise only powers delegated to it, among which is none to support Slavery, — considering these things, Sir,

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it is impossible to avoid the single conclusion, that Slavery is in no respect a national institution, and that the Constitution nowhere upholds property in man.

There is one other special provision of the Constitution, which I have reserved to this stage, not so much from its superior importance, but because it fitly stands by itself. This alone, if practically applied, would carry Freedom to all within its influence. It is an Amendment proposed by the First Congress, as follows:—

"No *person* shall be deprived of life, *liberty*, or property, *without due process of law*."

Under this great ægis the liberty of every person within the national jurisdiction is unequivocally placed. I say every person. Of this there can be no question. The word "person" in the Constitution embraces every human being within its sphere, whether Caucasian, Indian, or African, from the President to the slave. Show me a person within the national jurisdiction, and I confidently claim for him this protection, no matter what his condition or race or color. The natural meaning of the clause is clear, but a single fact of its history places it in the broad light of noon. As originally recommended by Virginia, North Carolina, and Rhode Island, it was restricted to the *freeman*. Its language was, "No *freeman* ought to be deprived of his life, *liberty*, or property, but by the law of the land."[1] In rejecting this limitation, the authors of the Amendment revealed their purpose, that no person, under the National Government, of whatever character, should be deprived of lib-

[1] Journal of Federal Convention, Supplement, pp. 419, 441, 455. Elliot's Debates, II. 484, III. 211, IV. 223.

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erty without due process of law, — that is, without due presentment, indictment, or other judicial proceeding. But this Amendment is nothing less than an express guaranty of Personal Liberty, and an express prohibition of its invasion anywhere, at least within the national jurisdiction.

Sir, apply these principles, and Slavery will again be as when Washington took his first oath as President. The Union Flag of the Republic will become once more the flag of Freedom, and at all points within the national jurisdiction will refuse to cover a slave. Beneath its beneficent folds, wherever it is carried, on land or sea, Slavery will disappear, like darkness under the arrows of the ascending sun, — like the Spirit of Evil before the Angel of the Lord.

In all national territories Slavery will be impossible.

On the high seas, under the national flag, Slavery will be impossible.

In the District of Columbia Slavery will instantly cease.

Inspired by these principles, Congress can give no sanction to Slavery by the admission of new Slave States.

Nowhere under the Constitution can the Nation, by legislation or otherwise, support Slavery, hunt slaves, or hold property in man.

Such, Sir, are my sincere convictions. According to the Constitution, as I understand it, in the light of the Past and of its true principles, there is no other conclusion which is rational or tenable, which does not defy authoritative rules of interpretation, does not falsify indisputable facts of history, does not affront

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the public opinion in which it had its birth, and does not dishonor the memory of the Fathers. And yet politicians of the hour undertake to place these convictions under formal ban. The generous sentiments which filled the early patriots, and impressed upon the government they founded, as upon the coin they circulated, the image and superscription of LIBERTY, have lost their power. The slave-masters, few in number, amounting to not more than three hundred and fifty thousand, according to the recent census, have succeeded in dictating the policy of the National Government, and have written SLAVERY on its front. The change, which began in the desire for wealth, was aggravated by the desire for political predominance.[1] Through Slavery the cotton crop increased, with its enriching gains; through Slavery States became part of the Slave Power. And now an arrogant and unrelenting ostracism is applied, not only to all who express themselves against Slavery, but to every man unwilling to be its menial. A novel test for office is introduced, which would have excluded all the Fathers of the Republic, — even Washington, Jefferson, and Franklin! Yes, Sir! Startling it may be, but indisputable. Could these revered demigods of history once again descend upon earth and mingle in our affairs, not one of them could receive a nomination from the National Convention of either of the two old political parties! Out of the convictions of their hearts and the utterances of their lips against Slavery they would be condemned.

This single fact reveals the extent to which the

[1] The same progression in ancient Rome arrested the observation of Sallust: "Primo pecuniæ, dein imperii cupido crevit. Ea quasi materies omnium malorum fuere." — *Catilina*, c. 10

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National Government has departed from its true course and its great examples. For myself, I know no better aim under the Constitution than to bring the Government back to the precise position on this question it occupied on the auspicious morning of its first organization by Washington, —

"Nunc retrorsum
Vela dare, atque iterare cursus
. . . . relictos," [1] —

that the sentiments of the Fathers may again prevail with our rulers, and the National Flag may nowhere shelter Slavery.

To such as count this aspiration unreasonable let me commend a renowned and life-giving precedent of English history. As early as the days of Queen Elizabeth, a courtier boasted that the air of England was too pure for a slave to breathe,[2] and the Common Law was said to forbid Slavery. And yet, in the face of this vaunt, kindred to that of our fathers, and so truly honorable, slaves were introduced from the West Indies. The custom of Slavery gradually prevailed. Its positive legality was affirmed, in professional opinions, by two eminent lawyers, Talbot and Yorke, each afterwards Lord Chancellor. It was also affirmed on the bench by the latter as Lord Hardwicke.[3] England was already a Slave State. The following advertisement, copied from a London newspaper, *The Public Advertiser*, of November 22, 1769, shows that the journals there were disfigured as some of ours, even in the District of Columbia.

"To be sold, a black girl, the property of J. B., eleven years of age, who is extremely handy, works at her needle

[1] Hor., Carm. I. xxxiv. 3–5.
[2] Case of Sommersett, Howell's State Trials, XX. 61.
[3] Ibid., 81.

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tolerably, and speaks English perfectly well; is of an excellent temper and willing disposition. Inquire of her owner at the Angel Inn, behind St. Clement's Church, in the Strand."

At last, in 1772, only three years after this advertisement, the single question of the legality of Slavery was presented to Lord Mansfield, on a writ of *Habeas Corpus*. A poor negro, named Sommersett, brought to England as a slave, became ill, and, with an inhumanity disgraceful even to Slavery, was turned adrift upon the world. Through the charity of an estimable man, the eminent Abolitionist, Granville Sharp, he was restored to health, when his unfeeling and avaricious master again claimed him as bondman. The claim was repelled. After elaborate and protracted discussion in Westminster Hall, marked by rarest learning and ability, Lord Mansfield, with discreditable reluctance, sullying his great judicial name, but in trembling obedience to the genius of the British Constitution, pronounced a decree which made the early boast a practical verity, and rendered Slavery forever impossible in England. More than fourteen thousand persons, at that time held as slaves, and breathing English air, — four times as many as are now found in this national metropolis, — stepped forth in the happiness and dignity of freemen.

With this guiding example I cannot despair. The time will yet come when the boast of our fathers will be made a practical verity also, and Court or Congress, in the spirit of this British judgment, will proudly declare that nowhere under the Constitution can man hold property in man. For the Republic such a decree will be the way of peace and safety. As Slavery is banished from the national jurisdiction, it will cease to vex

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our national politics. It may linger in the States as a local institution; but it will no longer engender national animosities, when it no longer demands national support.

II.

FROM this general review of the relations of the National Government to Slavery, I pass to the consideration of THE TRUE NATURE OF THE PROVISION FOR THE RENDITION OF FUGITIVES FROM SERVICE, embracing an examination of this provision in the Constitution, and especially of the recent Act of Congress in pursuance thereof. As I begin this discussion, let me bespeak anew your candor. Not in prejudice, but in the light of history and of reason, we must consider this subject. The way will then be easy, and the conclusion certain.

Much error arises from the exaggerated importance now attached to this provision, and from assumptions with regard to its origin and primitive character. It is often asserted that it was suggested by some special difficulty, which had become practically and extensively felt, anterior to the Constitution. But this is one of the myths or fables with which the supporters of Slavery have surrounded their false god. In the Articles of Confederation, while provision is made for the surrender of fugitive criminals, nothing is said of fugitive slaves or servants; and there is no evidence in any quarter, until after the National Convention, of hardship or solicitude on this account. No previous voice was heard to express desire for any provision on the subject. The story to the contrary is a modern fiction.

I put aside, as equally fabulous, the common saying,

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that this provision was one of the original compromises of the Constitution, and an essential condition of Union. Though sanctioned by eminent judicial opinions, it will be found that this statement is hastily made, without any support in the records of the Convention, the only authentic evidence of the compromises; nor will it be easy to find any authority for it in any contemporary document, speech, published letter, or pamphlet of any kind. It is true that there were compromises at the formation of the Constitution, which were the subject of anxious debate; but this was not one of them.

There was a compromise between the small and large States, by which equality was secured to all the States in the Senate.

There was another compromise finally carried, under threats from the South, *on the motion of a New England member*, by which the Slave States are allowed Representatives according to the whole number of free persons and "three fifths of all other persons,"[1] thus securing political power on account of their slaves, in consideration that direct taxes should be apportioned in the same way. Direct taxes have been imposed at only four brief intervals. The political power has been constant, and at this moment sends twenty-one members to the other House.

There was a third compromise, not to be mentioned without shame. It was that hateful bargain by which Congress was restrained until 1808 from the prohibition of the foreign slave-trade, thus securing, down to that period, toleration for crime. This was pertinaciously pressed by the South, even to the extent of absolute restriction on Congress. John Rutledge said: "If the

[1] Madison's Debates, July 12, 1787.

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Convention thinks that North Carolina, South Carolina, and Georgia will ever agree to the Plan [the National Constitution], unless their right to import slaves be untouched, the expectation is vain. The people of those States will never be such fools as to give up so important an interest." Charles Pinckney said: "South Carolina can never receive the Plan, if it prohibits the slave-trade." Charles Cotesworth Pinckney "thought himself bound to declare candidly, that he did not think South Carolina would stop her importations of slaves in any short time."[1] The effrontery of the slave-masters was matched by the sordidness of the Eastern members, who yielded again. Luther Martin, the eminent member of the Convention, in his contemporary address to the Legislature of Maryland, described the compromise. "I found," he said, "the Eastern States, notwithstanding their aversion to Slavery, were very willing to indulge the Southern States at least with a temporary liberty to prosecute the slave-trade, *provided the Southern States would in their turn gratify them by laying no restriction on navigation acts.*"[2] The bargain was struck, and at this price the Southern States gained the detestable indulgence. At a subsequent day Congress branded the slave-trade as piracy, and thus, by solemn legislative act, adjudged this compromise to be felonious and wicked.

Such are the three chief original compromises of the Constitution and essential conditions of Union. The case of fugitives from service is not of these. During the Convention it was not in any way associated with

[1] Madison's Debates, August 21 and 22, 1787.

[2] The Genuine Information delivered to the Legislature of Maryland, etc., p. 86: Appended to Vol. IV. Elliot's Debates.

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these. Nor is there any evidence from the records of this body, that the provision on this subject was regarded with any peculiar interest. As its absence from the Articles of Confederation had not been the occasion of solicitude or desire, anterior to the National Convention, so it did not enter into any of the original plans of the Constitution. It was introduced tardily, at a late period of the Convention, and adopted with very little and most casual discussion. A few facts show how utterly unfounded are recent assumptions.

The National Convention was convoked to meet at Philadelphia on the second Monday in May, 1787. Several members appeared at this time, but, a majority of the States not being represented, those present adjourned from day to day until the 25th, when the Convention was organized by the choice of George Washington as President. On the 28th a few brief rules and orders were adopted. On the next day they commenced their great work.

On the same day, Edmund Randolph, of slaveholding Virginia, laid before the Convention a series of fifteen resolutions, containing his plan for the establishment of a New National Government. Here was no allusion to fugitive slaves.

Also, on the same day, Charles Pinckney, of slaveholding South Carolina, laid before the Convention what was called "A Draft of a Federal Government, to be agreed upon between the Free and Independent States of America," an elaborate paper, marked by considerable minuteness of detail. Here are provisions, borrowed from the Articles of Confederation, securing to the citizens of each State equal privileges in the several States, giving faith to the public records of the States, and

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ordaining the surrender of fugitives from justice. But this draft, though from the flaming guardian of the slave interest, contained no allusion to fugitive slaves.

In the course of the Convention other plans were brought forward: on the 15th June, a series of eleven propositions by Mr. Patterson, of New Jersey, "so as to render the Federal Constitution adequate to the exigencies of Government and the preservation of the Union"; on the 18th June, eleven propositions by Mr. Hamilton, of New York, "containing his ideas of a suitable plan of Government for the United States"; and on the 19th June, Mr. Randolph's resolutions, originally offered on the 29th May, "as altered, amended, and agreed to in Committee of the Whole House." On the 26th July, twenty-three resolutions, already adopted on different days in the Convention, were referred to a "Committee of Detail," for reduction to the form of a Constitution. On the 6th August this Committee reported the finished draft of a Constitution. And yet in all these resolutions, plans, and drafts, *seven* in number, proceeding from eminent members and from able committees, no allusion is made to fugitive slaves. For three months the Convention was in session, and not a word uttered on this subject.

At last, on the 28th August, as the Convention was drawing to a close, on the consideration of the article providing for the privileges of citizens in different States, we meet the first reference to this matter, in words worthy of note. "General [Charles Cotesworth] Pinckney was not satisfied with it. He SEEMED *to wish some provision* should be included in favor of property in slaves." *But he made no proposition.* Unwilling to shock the Convention, and uncertain in his own mind, he only *seemed*

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to wish such a provision. In this vague expression of a vague desire this idea first appeared. In this modest, hesitating phrase is the germ of the audacious, unhesitating Slave Act. Here is the little vapor, which has since swollen, as in the Arabian tale, to the power and dimensions of a giant. The next article under discussion provided for the surrender of fugitives from justice. Mr. Butler and Mr. Charles Pinckney, both from South Carolina, now moved openly to require "fugitive slaves and servants to be delivered up like criminals." Here was no disguise. With Hamlet, it was now said in spirit, —

"*Seems*, Madam! Nay, it is. I know not *seems*."

But the very boldness of the effort drew attention and opposition. Mr. Wilson, of Pennsylvania, the learned jurist and excellent man, at once objected: "This would oblige the Executive of the State to do it at the public expense." Mr. Sherman, of Connecticut, "saw no more propriety in the public seizing and surrendering a slave or servant than a horse." Under the pressure of these objections, *the offensive proposition was withdrawn*, — never more to be renewed. The article for the surrender of criminals was then unanimously adopted.[1] On the next day, 29th August, profiting by the suggestions already made, Mr. Butler moved a proposition, — substantially like that now found in the Constitution, — for the surrender, not of "fugitive slaves," as originally proposed, but simply of "persons bound to service or labor," which, without debate or opposition of any kind, was unanimously adopted.[2]

Here, palpably, was no labor of compromise, no ad-

1 "Agreed to, *nem. con.*," are Madison's words.

2 "Agreed to, *nem. con.*," are again Madison's words.

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justment of conflicting interests, — nor even any expression of solicitude. The clause finally adopted was vague and faint as the original suggestion. In its natural import it is not applicable to slaves. If supposed by some to be applicable, it is clear that it was supposed by others to be inapplicable. It is now insisted that the term "*persons bound to service*," or "*held to service*," as expressed in the final revision, is the equivalent or synonym for "*slaves*." This interpretation is rebuked by an incident to which reference has been already made, but which will bear repetition. On the 13th September — a little more than a fortnight after the clause was adopted, and when, if deemed to be of any significance, it could not have been forgotten — the very word "service" came under debate, and received a fixed meaning. It was unanimously adopted as a substitute for "servitude" in another part of the Constitution, for the reason that it expressed "the *obligations of free persons*," while the other expressed "the condition of slaves." In the face of this authentic evidence, reported by Mr. Madison, it is difficult to see how the term "persons held to *service*" can be deemed to express anything beyond "the obligations of *free persons*." Thus, in the light of calm inquiry, does this exaggerated clause lose its importance.

The provision, showing itself thus tardily, and so slightly regarded in the National Convention, was neglected in much of the contemporaneous discussion before the people. In the Conventions of South Carolina, North Carolina, and Virginia, it was commended as securing important rights, though on this point there was difference of opinion. In the Virginia Convention, an eminent character, Mr. George Mason, with others, ex-

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pressly declared that there was "no security of property coming within this section." In the other Conventions it was disregarded. Massachusetts, while exhibiting peculiar sensitiveness at any responsibility for Slavery, seemed to view it with unconcern. One of her leading statesmen, General Heath, in the debates of the State Convention, strenuously asserted, that, in ratifying the Constitution, the people of Massachusetts "would do nothing to hold the blacks in slavery." "The Federalist,"[1] in its classification of the powers of Congress, describes and groups a large number as "those which provide for the harmony and proper intercourse among the States," and therein speaks of the power over public records, standing next in the Constitution to the provision concerning fugitives from service; but it fails to recognize the latter among the means of promoting "harmony and proper intercourse"; nor does its triumvirate of authors anywhere allude to the provision.

The indifference thus far attending this subject still continued. The earliest Act of Congress, passed in 1793, drew little attention. It was not suggested originally by any difficulty or anxiety touching fugitives from service, nor is there any contemporary record, in debate or otherwise, showing that any special importance was attached to its provisions in this regard. The attention of Congress was directed to fugitives from justice, and, with little deliberation, it undertook, in the same bill, to provide for both cases. In this accidental manner was legislation on this subject first attempted.

There is no evidence that fugitives were often seized under this Act. From a competent inquirer we learn that twenty-six years elapsed before it was successfully

[1] No. 42.

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enforced in any Free State. It is certain, that, in a case at Boston, towards the close of the last century, illustrated by Josiah Quincy as counsel, the crowd about the magistrate, at the examination, quietly and spontaneously opened a way for the fugitive, and thus the Act failed to be executed. It is also certain, that, in Vermont, at the beginning of the century, a Judge of the Supreme Court of the State, on application for the surrender of an alleged slave, accompanied by documentary evidence, gloriously refused compliance, *unless the master could show a Bill of Sale from the Almighty.* Even these cases passed without public comment.

In 1801 the subject was introduced in the House of Representatives by an effort for another Act, which, on consideration, was rejected. At a later day, in 1817–18, though still disregarded by the country, it seemed to excite a short-lived interest in Congress. In the House of Representatives, on motion of Mr. Pindall, of Virginia, a committee was appointed to inquire into the expediency of "providing more effectually by law for reclaiming servants and slaves escaping from one State into another," and a bill reported by them to amend the Act of 1793, after consideration for several days in Committee of the Whole, was passed. In the Senate, after much attention and warm debate, it passed with amendments. But on return to the House for adoption of the amendments, it was dropped.[1] This effort, which, in the discussions of this subject, has been thus far unnoticed, is chiefly remarkable as the earliest recorded evidence of the unwarrantable assertion, now so common, that this provision was originally of vital importance to the peace and harmony of the country.

[1] Annals of Congress, House and Senate Journals, 15th Cong. 1st Sess.

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At last, in 1850, we have another Act, passed by both Houses of Congress, and approved by the President, familiarly known as the Fugitive Slave Bill. As I read this statute, I am filled with painful emotions. The masterly subtlety with which it is drawn might challenge admiration, if exerted for a benevolent purpose; but in an age of sensibility and refinement, a machine of torture, however skilful and apt, cannot be regarded without horror. Sir, in the name of the Constitution, which it violates, of my country, which it dishonors, of Humanity, which it degrades, of Christianity, which it offends, I arraign this enactment, and now hold it up to the judgment of the Senate and the world. Again, I shrink from no responsibility. I may seem to stand alone; but all the patriots and martyrs of history, all the Fathers of the Republic, are with me. Sir, there is no attribute of God which does not take part against this Act.

But I am to regard it now chiefly as an infringement of the Constitution. Here its outrages, flagrant as manifold, assume the deepest dye and broadest character only when we consider that by its language it is not restricted to any special race or class, to the African or to the person with African blood, but that any inhabitant of the United States, of whatever complexion or condition, may be its victim. Without discrimination of color even, and in violation of every presumption of freedom, the Act surrenders all who may be claimed as "owing service or labor" to the same tyrannical proceeding. If there be any whose sympathies are not moved for the slave, who do not cherish the rights of the humble African, struggling for divine Freedom, as warmly as the rights of the white man, let him con-

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sider well that the rights of all are equally assailed. "Nephew," said Algernon Sidney in prison, on the night before his execution, "I value not my own life a chip; but what concerns me is, that *the law* which takes away my life may hang every one of you, whenever it is thought convenient."

Whilst thus comprehensive in its provisions, and applicable to all, there is no safeguard of Human Freedom which the monster Act does not set at nought.

It commits this great question — than which none is more sacred in the law — not to a solemn trial, but to summary proceedings.

It commits this great question, not to one of the high tribunals of the land, but to the unaided judgment of a single petty magistrate.

It commits this great question to a magistrate appointed, not by the President with the consent of the Senate, but by the Court, — holding office, not during good behavior, but merely during the will of the Court, — and receiving, not a regular salary, but fees according to each individual case.

It authorizes judgment on *ex parte* evidence, by affidavit, without the sanction of cross-examination.

It denies the writ of Habeas Corpus, ever known as the Palladium of the citizen.

Contrary to the declared purposes of the framers of the Constitution, it sends the fugitive back "at the public expense."

Adding meanness to violation of the Constitution, it bribes the Commissioner by a double stipend to pronounce against Freedom. If he dooms a man to Slavery, the reward is ten dollars; but saving him to Freedom, his dole is five.

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The Constitution expressly secures the "free exercise of religion": but this Act visits with unrelenting penalties the faithful men and women who render to the fugitive that countenance, succor, and shelter which in their conscience "religion" requires; and thus is practical religion directly assailed. Plain commandments are broken; and are we not told that "whosoever shall break one of these least commandments, and shall teach men so, he shall be called the least in the kingdom of Heaven"?[1]

As it is for the public weal that there should be an end of suits, so by the consent of civilized nations these must be instituted within fixed limitations of time; but this Act, exalting Slavery above even this practical principle of universal justice, ordains proceedings against Freedom without any reference to the lapse of time.

Glancing only at these points, and not stopping for argument, vindication, or illustration, I come at once upon two chief radical objections to this Act, identical in principle with those triumphantly urged by our fathers against the British Stamp Act: *first*, that it is a usurpation by Congress of powers not granted by the Constitution, and an infraction of rights secured to the States; and, *secondly*, that it takes away Trial by Jury in a question of Personal Liberty and a suit at Common Law. Either of these objections, if sustained, strikes at the very root of the Act. That it is obnoxious to both is beyond doubt.

Here, at this stage, I encounter the difficulty, that these objections are already foreclosed by legislation of

[1] Matt. v. 19.

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Congress and decisions of the Supreme Court, — that as early as 1793 Congress assumed power over this subject by an Act which failed to secure Trial by Jury, and that the validity of this Act under the Constitution has been affirmed by the Supreme Court. On examination, this difficulty will disappear.

The Act of 1793 proceeded from a Congress that had already recognized the United States Bank, chartered by a previous Congress, which, though sanctioned by the Supreme Court, has been since in high quarters pronounced unconstitutional. If it erred as to the Bank, it may have erred also as to fugitives from service. But the Act itself contains a capital error on this very subject, so declared by the Supreme Court, in pretending to vest a portion of the judicial power of the Nation in State officers. This error takes from the Act all authority as an interpretation of the Constitution. I dismiss it.

The decisions of the Supreme Court are entitled to great consideration, and will not be mentioned by me except with respect. Among the memories of my youth are happy days when I sat at the feet of this tribunal, while MARSHALL presided, with STORY by his side. The pressure now proceeds from the case of *Prigg* v. *Pennsylvania* (16 Peters, 539), where is asserted the power of Congress. Without going into minute criticism of this judgment, or considering the extent to which it is extra-judicial, and therefore of no binding force, — all which has been done at the bar in one State, and by an able court in another, — but conceding to it a certain degree of weight as a rule to the judiciary on this particular point, still it does not touch the grave question which springs from the denial of Trial by Jury. This

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judgment was pronounced by Mr. Justice Story. From the interesting biography of the great jurist, recently published by his son, we learn that the question of Trial by Jury was not considered as before the Court; so that, in the estimation of the learned judge himself, it was still an open question. Here are the words.

"One prevailing opinion, which has created great prejudice against this judgment, is, that it denies the right of a person claimed as a fugitive from service or labor to a trial by jury. This mistake arises from supposing the case to involve the general question as to the constitutionality of the Act of 1793. But in fact no such question was in the case; and the argument, that the Act of 1793 was unconstitutional, because it did not provide for a trial by jury according to the requisitions of the sixth article in the Amendments to the Constitution, having been suggested to my father on his return from Washington, he replied, that this question was not argued by counsel nor considered by the Court, and that he should still consider it an open one."[1]

But whatever may be the influence of this judgment as a rule to the judiciary, it cannot arrest our duty as legislators. And here I adopt with entire assent the language of President Jackson, in his memorable Veto, in 1832, of the Bank of the United States. To his course was opposed the authority of the Supreme Court, and this is his reply.

"If the opinion of the Supreme Court cover the whole ground of this Act, it ought not to control the coördinate authorities of this Government. The Congress, the Executive, and the Court must each for itself be guided by its own opinion of the Constitution. *Each public officer who takes an oath to support the Constitution swears that he will support it*

[1] Life and Letters of Joseph Story, edited by his Son, Vol. II. p. 396

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as he understands it, and not as it is understood by others. It is as much the duty of the House of Representatives, of the Senate, and of the President, to decide upon the constitutionality of any bill or resolution which may be presented to them for passage or approval, as it is of the Supreme Judges, when it may be brought before them for judicial decision. . . . . The authority of the Supreme Court must not, therefore, be permitted to control the Congress or the Executive, when acting in their legislative capacities, but to have only such influence as the force of their reasoning may deserve."[1]

With these authoritative words I dismiss this topic. The early legislation of Congress and the decisions of the Supreme Court cannot stand in our way. I advance to the argument.

(1.) *First, of the power of Congress over this subject.*

The Constitution contains *powers* granted to Congress, *compacts* between the States, and *prohibitions* addressed to the Nation and to the States. A compact or prohibition may be accompanied by a power, — but not necessarily, for it is essentially distinct in nature. And here the single question arises, Whether the Constitution, by grant, general or special, confers upon Congress any *power* to legislate on the subject of fugitives from service.

The whole legislative power of Congress is derived from two distinct sources: first, from the general grant, attached to the long catalogue of powers, "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government

[1] Senate Journal, 22d Cong. 1st Sess., pp. 438, 439.

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of the United States, or in any department or officer thereof"; and, secondly, from special grants in other parts of the Constitution. As the provision in question does not appear in the catalogue of powers, and does not purport to vest any power in the Government of the United States, or in any department or officer thereof, no power to legislate on this subject can be derived from the general grant. Nor can any such power be derived from any special grant in any other part of the Constitution; for none such exists. The conclusion must be, that no power is delegated to Congress over the surrender of fugitives from service.

In all contemporary discussions and comments, the Constitution was constantly justified and recommended on the ground that the powers not given to the Government were withheld. If under its original provisions any doubt on this head could have existed, it was removed, so far as language could remove it, by the Tenth Amendment, which, as we have already seen, expressly declares, that "the powers *not delegated* to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Here, on the simple text of the Constitution, I might leave this question. But its importance justifies more extended examination, in twofold light: *first*, in the history of the Convention, revealing the unmistakable intention of its members; and, *secondly*, in the true principles of our Political System, by which the powers of the Nation and of the States are respectively guarded.

Look first at the *history of the Convention*. The articles of the old Confederation, adopted by the Continental Congress 15th November, 1777, though containing

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no reference to fugitives from service, had provisions substantially like those in our present Constitution, touching the privileges of citizens in the several States, the surrender of fugitives from justice, and the credit due to the public records of States. But, since the Confederation had no powers not "expressly delegated," and as no power was delegated to legislate on these matters, they were nothing more than articles of treaty or compact. Afterwards, at the National Convention, these three provisions found place in the first reported draft of a Constitution, and were arranged in the very order which they occupied in the Articles of Confederation. *The clause relating to public records stood last.* Mark this fact.

When this clause, being in form merely a *compact*, came up for consideration in the Convention, various efforts were made to graft upon it a *power*. This was on the very day of the adoption of the clause relating to fugitives from service. Charles Pinckney moved to commit it, with a proposition for a *power* to establish uniform laws on the subject of bankruptcy and foreign bills of exchange. Mr. Madison was in favor of a *power* for the execution of judgments in other States. Gouverneur Morris, on the same day, moved to commit a further proposition for a *power* "to determine the proof and effect of such acts, records, and proceedings." Amidst all these efforts to associate a power with this compact, it is clear that nobody supposed that any such already existed. This narrative places the views of the Convention beyond question.

The compact regarding public records, together with these various propositions, was referred to a committee, on which were Mr. Randolph and Mr. Wilson, with

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John Rutledge, of South Carolina, as chairman. After several days, they reported the compact, with a *power* in Congress to prescribe by general laws the manner in which such records shall be proved. A discussion ensued, in which Mr. Randolph complained that the "definition of the powers of the Government was so loose as to give it opportunities of usurping all the State powers. *He was for not going further than the Report, which enables the Legislature to provide for the effect of judgments.*"[1] The clause of compact with the power attached was then adopted, and is now part of the Constitution. In presence of this solicitude for the preservation of "State powers," even while considering a proposition for an express power, and also of the distinct statement of Mr. Randolph, that he "was for not going further than the Report," it is evident that the idea could not then have occurred, that a power was coupled with the naked clause of compact on fugitives from service.

At a later day the various clauses and articles severally adopted from time to time in Convention were referred to a committee of revision and arrangement, that they might be reduced to form as a connected whole. *Here another change was made.* The clause relating to public records, with the power attached, was taken from its original place at the bottom of the clauses of compact, and promoted to stand first in the article, as a distinct section, while the other clauses of compact concerning citizens, fugitives from justice, and fugitives from service, each and all without any power attached, by a natural association compose but a single section, thus:—

[1] Madison's Debates, Sept. 8, 1787.

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"ARTICLE IV.

"SECTION 1. Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. *And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.*

"SECTION 2. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

"A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the Executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

"No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

"SECTION 3. New States *may be admitted by the Congress* into this Union; but no new State shall be formed or erected within the jurisdiction of any other State, nor any State be formed by the junction of two or more States or parts of States, without the consent of the Legislatures of the States concerned, *as well as of the Congress.*

"*The Congress shall have power* to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

"SECTION 4. *The United States shall guaranty* to every State in this Union a republican form of Government, and *shall protect* each of them against invasion, and, on application of the Legislature, or of the Executive (when the Legislature cannot be convened), against domestic violence."

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Here is the whole article, in its final form. It will be observed that the third section, immediately following the triad section of compacts, contains two specific powers, — one with regard to new States, and the other with regard to the public Territory. These are naturally grouped together, while the fourth section of this same article, which is distinct in character, is placed by itself. In the absence of all specific information, reason alone can determine why this arrangement was made. But the conclusion is obvious, that, in the view of the Committee and of the Convention, each of these sections differs from the others. The first contains a compact with a grant of power. The second contains provisions, all of which are simple compacts, and two of which were confessedly simple compacts in the old Articles of Confederation, from which, unchanged in character, they were borrowed. The third is a twofold grant of power to Congress, without any compact. The fourth is neither power nor compact merely, nor both united, but a solemn injunction upon the National Government to perform an important duty.

The framers of the Constitution were wise and careful, having a reason for what they did, and understanding the language they employed. They did not, after discussion, incorporate into their work any superfluous provision; nor did they without design adopt the peculiar arrangement in which it appears. Adding to the record compact an express grant of power, they testified not only their desire for such power in Congress, but their conviction that without such express grant it would not exist. But if express grant was necessary in this case, it was equally necessary in all the other cases. *Expressum facit cessare tacitum.* Especially, in view of

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its odious character, was it necessary in the case of fugitives from service. Abstaining from any such grant, and then grouping the bare compact with other similar compacts, separate from every grant of power, they testified their purpose most significantly. Not only do they decline all addition to the compact of any such power, but, to render misapprehension impossible, to make assurance doubly sure, to exclude any contrary conclusion, they punctiliously arrange the clauses, on the principle of *noscitur a sociis*, so as to distinguish all the grants of power, but especially to make the new grant of power, in the case of public records, stand forth in the front by itself, severed from the naked compacts with which it was originally associated.

Thus the proceedings of the Convention show that the founders understood the necessity of *powers* in certain cases, and, on consideration, jealously granted them. A closing example will strengthen the argument. Congress is expressly empowered "*to establish an uniform rule of* Naturalization, and *uniform laws* on the subject of Bankruptcies, *throughout the United States.*" Without this provision these two subjects would have fallen within the control of the States, leaving the Nation powerless *to establish a uniform rule* thereupon. Now, instead of the existing compact on fugitives from service, it would have been easy, had any such desire prevailed, to add this case to the clause on Naturalization and Bankruptcies, and to empower Congress TO ESTABLISH A UNIFORM RULE FOR THE SURRENDER OF FUGITIVES FROM SERVICE THROUGHOUT THE UNITED STATES. Then, of course, whenever Congress undertook to exercise the power, all State control of the subject would be superseded. The National Government would have

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been constituted, like Nimrod, the mighty Hunter, with power to gather the huntsmen, to halloo the pack, and to direct the chase of men, ranging at will, without regard to boundaries or jurisdictions, throughout all the States. But no person in the Convention, not one of the reckless partisans of Slavery, was so audacious as to make this proposition. Had it been distinctly made, it would have been as distinctly denied.

The fact that the provision on this subject was adopted *unanimously*, while showing the little importance attached to it *in the shape it finally assumed*, testifies also that it could not have been regarded *as a source of National power for Slavery*. It will be remembered that among the members of the Convention were Gouverneur Morris, who had said that he "NEVER would concur in upholding domestic slavery,"—Elbridge Gerry, who thought we "ought to be careful NOT *to give any sanction to it*,"—Roger Sherman, who "was OPPOSED to a tax on slaves imported, *because it implied they were property*,"—James Madison, who "thought it WRONG to admit in the Constitution the idea that there could be property in men,"—and Benjamin Franklin, who likened American slaveholders to Algerine corsairs. In the face of these unequivocal judgments, it is absurd to suppose that these eminent citizens consented *unanimously* to any provision by which the National Government, the creature of their hands, dedicated to Freedom, could become the most offensive agent of Slavery.

Thus much for the evidence from the history of the Convention. But the *true principles of our Political System* are in harmony with this conclusion of history; and here let me say a word of State Rights.

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It was the purpose of our fathers to create a National Government, and to endow it with adequate powers. They had known the perils of imbecility, discord, and confusion, protracted through the uncertain days of the Confederation, and they desired a government which should be a true bond of Union and an efficient organ of national interests at home and abroad. But while fashioning this agency, they fully recognized the governments of the States. To the Nation were delegated high powers, essential to the national interests, but specific in character and limited in number. To the States and to the people were reserved the powers, general in character and unlimited in number, not delegated to the Nation or prohibited to the States.

The integrity of our Political System depends upon harmony in the operations of the Nation and of the States. While the Nation within its wide orbit is supreme, the States move with equal supremacy in their own. But, from the necessity of the case, the supremacy of each in its proper place excludes the other. The Nation cannot exercise rights reserved to the States, nor can the States interfere with the powers of the Nation. Any such action on either side is a usurpation. These principles were distinctly declared by Mr. Jefferson in 1798, in words often adopted since, and which must find acceptance from all parties.

"That the several States composing the United States of America are not united on the principle of unlimited submission to their General Government; but that by a compact, under the style and title of a Constitution for the United States and of Amendments thereto, they constituted a General Government for special purposes, *delegated to that Government certain definite powers*, reserving, each State to

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itself, the residuary mass of right to their own self-government; and that *whensoever the General Government assumes undelegated powers, its acts are unauthoritative, void, and of no force.*"[1]

I have already amply shown to-day that Slavery is in no respect national, — that it is not within the sphere of national activity, — that it has no "positive" support in the Constitution, — and that any interpretation inconsistent with this principle would be abhorrent to the sentiments of its founders. Slavery is a local institution, peculiar to the States, and under the guardianship of State Rights. It is impossible, without violence to the spirit and letter of the Constitution, to claim for Congress any power to legislate either for its abolition in the States or its support anywhere. *Non-Intervention* is the rule prescribed to the Nation. Regarding the question in its more general aspects only, and putting aside, for the moment, the perfect evidence from the records of the Convention, it is palpable that there is no *national fountain* out of which the existing Slave Act can possibly spring.

But this Act is not only an unwarrantable assumption of power by the Nation, it is also an infraction of rights reserved to the States. Everywhere within their borders the States are the peculiar guardians of *personal liberty*. By Jury and Habeas Corpus to save the citizen harmless against all assault is among their duties and rights. To his State the citizen, when oppressed, may appeal; nor should he find that appeal denied. But this Act despoils him of rights, and despoils his State of all power to protect him. It subjects him to the wretched

[1] Kentucky Resolutions of 1798: Jefferson's Writings, Vol. IX. p. 464. See also Elliot's Debates, Vol. IV., Appendix, p. 380.

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chance of false oaths, forged papers, and facile commissioners, and takes from him every safeguard. Now, if the slaveholder has a right to be secure *at home* in the enjoyment of *Slavery*, so also has the freeman of the North — and every person there is presumed to be a freeman — an equal right to be secure *at home* in the enjoyment of *Freedom*. The same principle of State Rights by which Slavery is protected in the Slave States throws an impenetrable shield over Freedom in the Free States. And here, let me say, is the only security for Slavery in the Slave States, as for Freedom in the Free States. In the present fatal overthrow of State Rights you teach a lesson which may return to plague the teacher. Compelling the National Government to stretch its Briarean arms into the Free States for the sake of Slavery, you show openly how it may stretch these same hundred giant arms into the Slave States for the sake of Freedom. This lesson was not taught by our fathers.

Here I end this branch of the question. The true principles of our Political System, the history of the National Convention, the natural interpretation of the Constitution, all teach that this Act is a usurpation by Congress of powers that do not belong to it, and an infraction of rights secured to the States. It is a sword, whose handle is at the National Capital, and whose point is everywhere in the States. A weapon so terrible to Personal Liberty the Nation has no power to grasp.

(2.) *And now of the denial of Trial by Jury.*

Admitting, for the moment, that Congress is intrusted with power over this subject, which truth disowns, still

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the Act is again radically unconstitutional from its denial of Trial by Jury in a question of Personal Liberty and a suit at Common Law. Since on the one side there is a claim of property, and on the other of liberty, both property and liberty are involved in the issue. To this claim on either side is attached Trial by Jury.

To me, Sir, regarding this matter in the light of the Common Law and in the blaze of free institutions, it has always seemed impossible to arrive at any other conclusion. If the language of the Constitution were open to doubt, which it is not, still all the presumptions of law, all the leanings to Freedom, all the suggestions of justice, plead angel-tongued for this right. Nobody doubts that Congress, if it legislates on this matter, *may* allow a Trial by Jury. But if it *may*, so overwhelming is the claim of justice, it MUST. Beyond this, however, the question is determined by the precise letter of the Constitution.

Several expressions in the provision for the surrender of fugitives from service show the essential character of the proceedings. In the first place, the person must be, not merely *charged*, as in the case of fugitives from justice, but actually *held to service* in the State from which he escaped. In the second place, he must "be delivered up on claim of the party to whom such service or labor may be *due*." These two facts, that he was *held* to service, and that his service was *due* to his claimant, are directly placed in issue, and must be proved. Two necessary incidents of the delivery may also be observed. First, it is made in the State where the fugitive is found; and, secondly, it restores to the claimant complete control over the person of the fugi-

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tive. From these circumstances it is evident that the proceedings cannot be regarded, in any just sense, as preliminary, or ancillary to some future formal trial, but as complete in themselves, final and conclusive.

These proceedings determine on the one side the question of Property, and on the other the sacred question of Personal Liberty in its most transcendent form, — Liberty not merely for a day or a year, but for life, and the Liberty of generations that shall come after, so long as Slavery endures. To these questions the Constitution, by two specific provisions, attaches Trial by Jury. One is the familiar clause, already adduced: "No *person* shall be deprived of life, *liberty*, or property, *without due process of law*," — that is, without due proceeding at law, with Trial by Jury. Not stopping to dwell on this, I press at once to the other provision, which is still more express: "In suits at Common Law, where the value in controversy shall exceed twenty dollars, the right of Trial by Jury shall be preserved." This clause, which does not appear in the Constitution as first adopted, was suggested by the very spirit of Freedom. At the close of the National Convention, Elbridge Gerry refused to sign the Constitution because, among other things, it established "a tribunal *without juries*, a Star Chamber as to civil cases."[1] Many united in his opposition, and on the recommendation of the First Congress this additional safeguard was adopted as an amendment.

Now, regarding the question as one of Property, or of Personal Liberty, in either alternative the Trial by Jury is secured. For this position authority is ample. In the debate on the Fugitive Slave Bill of 1817–18, a

[1] Madison's Debates, Sept. 15, 1787.

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Senator from South Carolina, Mr. Smith, anxious for the asserted right of property, objected, on this very floor, to a reference of the question, under the writ of Habeas Corpus, to a judge without a jury. Speaking solely for Property, these were his words.

"This would give a judge the sole power of deciding *the right of property the master claims in his slave, instead of trying that right by a jury, as prescribed by the Constitution.* He would be judge of matters of law and matters of fact, clothed with all the powers of a jury as well as the powers of a court. Such a principle is unknown in your system of jurisprudence. *Your Constitution has forbid it.* It preserves the right of Trial by Jury in all cases where the value in controversy exceeds twenty dollars."[1]

But this provision has been repeatedly discussed by the Supreme Court, so that its meaning is not open to doubt. Three conditions are necessary: *first*, the proceeding must be "a suit"; *secondly*, "at Common Law"; and, *thirdly*, "where the value in controversy exceeds twenty dollars." In every such case "the right of Trial by Jury *shall* be preserved." Judgments of the Supreme Court cover each of these points.

First. In the case of *Cohens* v. *Virginia* (6 Wheaton, 407), the Court say: "What is a *suit?* We understand it to be the prosecution or pursuit of some *claim*, demand, or request." Of course, then, the "claim" for a fugitive must be a "suit."

Secondly. In the case of *Parsons* v. *Bedford et al.* (3 Peters, 447), while considering this very clause, the Court say: "By *Common Law* the framers of the Constitution meant . . . . not merely suits which the

[1] Annals of Congress, 15th Cong. 1st Sess., March 6, 1818, col. 282.

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Common Law recognized among its old and settled proceedings, but suits in which *legal rights* were to be ascertained and determined. . . . . In a just sense, the Amendment may well be construed to embrace all suits which are not of Equity and Admiralty jurisdiction, *whatever may be the peculiar form which they may assume to settle legal rights.*" Now, since the claim for a fugitive is not a suit in Equity or Admiralty, but a suit to settle what are called legal rights, it must be a "suit at Common Law."

Thirdly. In the case of *Lee* v. *Lee* (8 Peters, 44), on a question whether "the value in controversy" was "one thousand dollars or upwards," it was objected, that the appellants, who were petitioners for Freedom, were not of the value of one thousand dollars. But the Court said: "The matter in dispute is the Freedom of the petitioners. . . . . *This is not susceptible of a pecuniary valuation.* . . . . . We entertain no doubt of the jurisdiction of the Court."[1] Of course, then, since Liberty is above price, the claim to any fugitive always and necessarily presumes that "the value in controversy exceeds twenty dollars."

By these successive steps, sustained by judgments of the highest tribunal, it appears, as in a diagram, that the right of Trial by Jury is secured to the fugitive from service.

This conclusion needs no additional authority; but it receives curious illustration from the ancient records

[1] The rule of the Roman law was explicit: *Neque humanum fuerit ob rei pecuniariæ quæstionem libertati moram fieri.* This is a text of Ulpian (Digestorum Lib. XL. Tit. V., *De Fideicommissariis Libertatibus*, 37). In the same spirit is the mediæval verse, —

"Non bene pro toto libertas venditur auro."

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of the Common Law, so familiar and dear to the framers of the Constitution. It is said by Mr. Burke, in his magnificent speech on Conciliation with America, that "nearly as many of Blackstone's Commentaries were sold in America as in England," [1] carrying thither the knowledge of those vital principles of Freedom which were the boast of the British Constitution. Thus imbued, the earliest Continental Congress, in 1774, declared, "That the respective Colonies are entitled to the Common Law of England, and more especially to the great and inestimable privilege of being tried by their Peers of the Vicinage, according to the course of that law." [2] Amidst the troubles which heralded the Revolution, the Common Law was claimed as a birthright.

Now, although the Common Law may not be approached as a source of jurisdiction under the National Constitution, — and on this interesting topic I forbear to dwell, — *it is clear that it may be employed to determine the meaning of technical terms in the Constitution borrowed from this law.* This, indeed, is expressly sanctioned by Mr. Madison, in his celebrated Report of 1799, while limiting the extent to which the Common Law may be employed. Thus by this law we learn the nature of *Trial by Jury*, which, though secured, is not described by the Constitution; also what are *Attainder*, *Habeas Corpus*, and *Impeachment*, all technical terms of the Constitution, borrowed from the Common Law. By this law, and its associate Chancery, we learn what are *cases in law and equity* to which the judicial power of

[1] Works (ed. 1801), Vol. III. p. 55.

[2] Declaration of Rights, October 14, 1774: Journals of Congress, Vol. I. p. 29.

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the United States is extended. These instances I adduce merely for example. Also in the same way we learn what are *suits at Common Law.*

Now, on principle and authority, *a claim for the delivery of a fugitive slave is a suit at Common Law,* and is embraced naturally and necessarily in this class of judicial proceedings. This proposition can be placed beyond question. And here, especially, let me ask the attention of all learned in the law. On this point, as on every other in this argument, I challenge inquiry and answer.

History painfully records, that, during the early days of the Common Law, and down even to a late period, a system of Slavery existed in England, known under the name of *villenage.* The slave was generally called a *villein,* though in the original Latin forms of judicial proceedings he was termed *nativus,* implying slavery by birth. The incidents of this condition are minutely described, and also the mutual remedies of master and slave, all of which were regulated by the Common Law. Slaves sometimes then, as now, *escaped* from their masters. The claim for them, after such *escape,* was prosecuted by a "suit at Common Law," to which, as to every suit at Common Law, Trial by Jury was necessarily attached. Blackstone, in his Commentaries, in words which must have been known to all the lawyers of the Convention, said of *villeins:* "They could not leave their lord without his permission; *but if they ran away,* or were purloined from him, *might be* CLAIMED *and recovered by* ACTION, *like beasts or other chattels.*"[1] This very word, "action," of itself implies "a suit at Common Law" with Trial by Jury.

[1] Commentaries, Vol. II. p. 93.

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From other sources we learn precisely what the *action* was. That great expounder of the ancient law, Mr. Hargrave, says, "Our Year Books and Books of Entries are full of the forms used in pleading a title to villeins regardant."[1] Though no longer of practical value in England, they remain as monuments of jurisprudence, and as mementos of a barbarous institution. He thus describes the remedy of the master at Common Law.

"The lord's remedy for a *fugitive villein* was either by seizure or by suing out a writ of *Nativo Habendo*, or Neifty, as it is sometimes called. If the lord seized, the villein's most effectual mode of recovering liberty was by the writ of *Homine Replegiando*, which had great advantage over the writ of *Habeas Corpus*. In the *Habeas Corpus* the return cannot be contested by pleading against the truth of it, and consequently on a *Habeas Corpus the question of liberty cannot go to a jury for trial*. . . . . But in the *Homine Replegiando* it was otherwise. . . . . The plaintiff, ... on the defendant's pleading the villenage, had the same opportunity of contesting it as when impleaded by the lord in a *Nativo Habendo*. If the lord sued out a *Nativo Habendo*, and the villenage was denied, in which case the sheriff could not seize the villein, *the lord was then to enter his plaint in the county court;* and as the sheriff was not allowed to try the question of villenage in his court, the lord could not have any benefit from the writ, without removing the cause by the writ of *Pone* into the King's Bench or Common Pleas."[2]

The authority of Mr. Hargrave is sufficient. But I mean to place this matter beyond all cavil. From the Digest of Lord Chief Baron Comyns, which at the

[1] Argument in Sommersett's Case: Howell's State Trials, XX. 42.
[2] Ibid., 88, 89, note.

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adoption of the Constitution was among the classics of our jurisprudence, I derive another description of the remedy.

"If the lord claims an inheritance in his villein, *who flies from his lord against his will*, and lives in a place out of the manor to which he is regardant, the lord shall have a *Nativo Habendo*. And upon such writ, directed to the sheriff, he may seize him who does not deny himself to be a villein. But if the defendant say that he is a freeman, the sheriff cannot seize him, but the lord must remove the writ by *Pone* before the Justices in Eyre, or in C. B., *where he must count upon it*."[1]

An early writer of peculiar authority, Fitzherbert, in his *Natura Brevium*, on the writs of the Common Law, thus describes these proceedings.

"The writ *de Nativo Habendo* lieth for the lord who claimeth inheritance in any villein, *when his villein is run from him*, and is remaining within any place out of the manor unto which he is regardant, or when he departeth from his lord against the lord's will: and the writ shall be directed unto the sheriff. . . . . And the sheriff may seize the villein, and deliver him unto his lord, if the villein confess unto the sheriff that he is his villein; but if the villein say to the sheriff that he is frank, then it seemeth that the sheriff ought not to seize him: as it is in a replevin, if the defendant claim property, the sheriff cannot replevy the cattle, but the party ought to sue a writ *de Proprietate Probanda:* and so if the villein say that he is a freeman, &c., then the sheriff ought not to seize him, but then the lord ought to sue a *Pone* to remove the plea before the Justices in the Common Pleas, or before the Justices in Eyre. But if the villein purchase a writ *de Libertate Probanda* before the lord

[1] Comyns's Digest: Remedy for a Villein, (C. 1,) *Nativo Habendo.*

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hath sued the *Pone* to remove the plea before the Justices, then that writ of *Libertate Probanda* is a *Supersedeas* unto the lord, that he proceed not upon the writ of *Nativo Habendo* till the Eyre of the Justices, or till the day of the plea be adjourned before the Justices, and that the lord ought not to seize the villein in the mean time."[1]

These authorities are not merely applicable to the general question of freedom, but they distinctly contemplate the case of *fugitive* slaves, and the "suits at Common Law" for their rendition. Blackstone speaks of villeins who "ran away"; Hargrave of "fugitive villeins"; Comyns of a villein "who flies from his lord against his will"; and Fitzherbert of the proceedings of the lord "when his villein is run from him." The forms, writs, counts, pleadings, and judgments in these suits are all preserved among the precedents of the Common Law. The writs are known as original writs, which the party on either side, at the proper stage, could sue out of right without showing cause. The writ of *Libertate Probanda* for a fugitive slave was in this form:—

"LIBERTATE PROBANDA.

"The king to the sheriff, &c. A. and B. her sister have showed unto us, that, whereas they are free women, and ready to prove their liberty, F., claiming them to be his neifs unjustly, vexes them; and therefore we command you, that, if the aforesaid A. and B. shall make you secure touching the proving of their liberty, then put that plea before our justices at the first assizes, when they shall come into those parts, because proof of this kind belongeth not to you to take; and in the mean time cause the said A. and B. to have peace thereupon, and tell the aforesaid F. that he may

[1] Fitzherbert, Natura Brevium, Vol. I. p. 77.

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be there, if he will, to prosecute his plea thereof against the aforesaid A. and B. And have there this writ. Witness, &c." [1]

By these various proceedings, all ending in Trial by Jury, Personal Liberty was guarded, even in the unrefined and barbarous days of the early Common Law. Any person claimed as a fugitive slave might invoke this Trial as a sacred right. Whether the master proceeded by seizure, as he might, or by legal process, Trial by Jury, in a suit at Common Law, before one of the high courts of the realm, was equally secured. In the case of seizure, the fugitive, reversing the proceedings, might institute process against his master, and appeal to a Court and Jury. In the case of process by the master, the watchful law secured to the fugitive the same protection. By no urgency of force, by no device of process, could any person claimed as a slave be defrauded of this Trial. Such was the Common Law. If its early boast, that there could be no slaves in England, fails to be true, this at least may be its pride, — that, according to its indisputable principles, the liberty of every man was placed under the guard of Trial by Jury.

These things may seem new to us; but they must have been known to the members of the Convention, particularly to those from South Carolina, through whose influence the provision on this subject was adopted. Charles Cotesworth Pinckney and Mr. Rutledge had studied law at the Temple, one of the English Inns of Court. It would be a discredit to them, and also to other learned lawyers, members of the Convention, to suppose that they were not conversant with the principles and precedents directly applicable to this subject, all of which are set down in works of acknowledged

[1] Fitzherbert, Vol. I. p. 77.

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authority, and at that time of constant professional study. Only a short time before, in the case of Sommersett, they had been most elaborately examined in Westminster Hall. In a forensic effort of unsurpassed learning and elevation, which of itself vindicates for its author his great juridical name, Mr. Hargrave had fully made them known to such as were little acquainted with the more ancient sources. But even if we could suppose them unknown to the lawyers of the Convention, they are none the less applicable in determining the true meaning of the Constitution.

The conclusion is explicit. Clearly and indisputably, in England, the country of the Common Law, a claim for a fugitive slave was "a suit at Common Law," recognized "among its old and settled proceedings." To question this, in the face of authentic principles and precedents, is preposterous. As well might it be questioned, that a writ of replevin for a horse, or a writ of right for land, was "a suit at Common Law." It follows, then, that this *technical term* of the Constitution, read in the illumination of the Common Law, naturally and necessarily embraces proceedings for the recovery of fugitive slaves, *if any such be instituted or allowed under the Constitution.* And thus, by the letter of the Constitution, in harmony with the requirements of the Common Law, all such persons, when claimed by their masters, are entitled to Trial by Jury.

Such, Sir, is the argument, briefly uttered, against the constitutionality of the Slave Act. Much more I might say on this matter; much more on the two chief grounds of objection which I have occupied. But I am admonished to hasten on.

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Opposing this Act as doubly unconstitutional from the want of power in Congress and from the denial of Trial by Jury, I find myself again encouraged by the example of our Revolutionary Fathers, in a case which is a landmark of history. The parallel is important and complete. In 1765, the British Parliament, by a notorious statute, attempted to draw money from the Colonies through a stamp tax, while the determination of certain questions of forfeiture under the statute was delegated, not to the Courts of Common Law, but to Courts of Admiralty without a jury. The Stamp Act, now execrated by all lovers of Liberty, had this extent and no more. Its passage was the signal for a general flame of opposition and indignation throughout the Colonies. It was denounced as contrary to the British Constitution, on two principal grounds: *first*, as a usurpation by Parliament of powers not belonging to it, and an infraction of rights secured to the Colonies; and, *secondly*, as a denial of Trial by Jury in certain cases of property.

The public feeling was variously expressed. At Boston, on the day the Act was to take effect, the shops were closed, the bells of the churches tolled, and the flags of the ships hung at half-mast. At Portsmouth, in New Hampshire, the bells were tolled, and the friends of Liberty were summoned to hold themselves in readiness for her funeral. At New York, the obnoxious Act, headed "Folly of England and Ruin of America," was contemptuously hawked about the streets. Bodies of patriots were organized everywhere under the name of "Sons of Liberty." The merchants, inspired then by Liberty, resolved to import no more goods from England until the repeal of the Act. The orators also spoke. James Otis with fiery tongue appealed to Magna Charta.

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Of all the States, Virginia — whose shield bears the image of Liberty trampling upon chains — first declared herself by solemn resolutions, which the timid thought "treasonable,"[1] but which soon found response. New York followed. Massachusetts came next, speaking by the pen of the inflexible Samuel Adams. In an Address from the Legislature to the Governor, the true grounds of opposition to the Stamp Act, coincident with the two radical objections to the Slave Act, are clearly set forth.

"You are pleased to say that the Stamp Act is an Act of Parliament, and as such ought to be observed. This House, Sir, has too great a reverence for the Supreme Legislature of the nation *to question its just authority.* It by no means appertains to us to presume to adjust the boundaries of the *power* of Parliament; *but boundaries there undoubtedly are.* We hope we may without offence put your Excellency in mind of that most grievous sentence of excommunication solemnly denounced by the Church in the name of the Sacred Trinity, in the presence of King Henry the Third and the estates of the realm, *against all those who should make statutes,* OR OBSERVE THEM, BEING MADE, *contrary to the liberties of Magna Charta.* . . . . The Charter of this Province invests the General Assembly with the *power* of making laws for its internal government and taxation; and this Charter has never yet been forfeited. The Parliament has a right to make all laws within the limits of their own constitution. . . . . The people complain that the Act invests a single judge of the Admiralty with a power to try and determine their property, in controversies arising from internal concerns, *without a jury,* contrary to the very expression of Magna Charta, that no freeman shall be amerced but by the oath of good and lawful men of the vicinage. . . . . We deeply regret it that

[1] Hutchinson, History of Massachusetts, Vol. III. p. 119.

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the Parliament has seen fit to pass such an act as the Stamp Act; we flatter ourselves that the hardships of it will shortly appear to them in such a point of light as shall induce them, in their wisdom, to repeal it; *in the mean time we must beg your Excellency to excuse us from doing anything to assist in the execution of it.*"[1]

Thus in those days spoke Massachusetts. The parallel still proceeds. The unconstitutional Stamp Act was welcomed in the Colonies by the Tories of that day precisely as the unconstitutional Slave Act is welcomed by large and imperious numbers among us. Hutchinson, at that time Lieutenant-Governor and Chief-Justice of Massachusetts, wrote to Ministers in England: "The Stamp Act is received among us with as much decency as could be expected. It leaves no room for evasion, and will execute itself."[2] Like the Judges of our day, in charges to grand juries, he resolutely vindicated the Act, and admonished "the jurors and people" to obey.[3] Like Governors of our day, Bernard, in his speech to the Legislature of Massachusetts, demanded unreasoning submission. "I shall not," says this British Governor, "enter into any disquisition of the policy of the Act. . . . . I have only to say that it is an Act of the Parliament of Great Britain; . . . . and I trust that the supremacy of that Parliament over all the members of their wide and diffused empire never was and never will be denied within these walls."[4] The military were against the people. A British major of artillery at New York ex-

[1] Journal of the House of Representatives of Massachusetts Bay, October 24, 1765, pp. 131–138. Hutchinson, Vol. III., Appendix, pp. 472–474.

[2] Bancroft, History of the United States, Vol. V. p. 272.

[3] Ibid.

[4] Journal of the House of Representatives, September 25, 1765, p. 119. Hutchinson, Vol. III., Appendix, pp 467, 468.

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claimed, in tones not unlike those now heard, "I will cram the stamps down their throats with the end of my sword!"[1] The elaborate answer of Massachusetts, a paper of historic grandeur, drawn by Samuel Adams, was pronounced "the ravings of a parcel of wild enthusiasts."[2]

Thus in those days spoke the partisans of the Stamp Act. But their weakness was soon manifest. In the face of an awakened community, where discussion has free scope, no men, though supported by office and wealth, can long maintain injustice. Earth, water, Nature they may subdue; but Truth they cannot subdue. Subtle and mighty against all efforts and devices, it fills every region of light with its majestic presence. The Stamp Act was discussed and understood. Its violation of constitutional rights was exposed. By resolutions of legislatures and of town meetings, by speeches and writings, by public assemblies and processions, the country was rallied in peaceful phalanx *against the execution of the Act.* To this great object, within the bounds of Law and the Constitution, were bent all the patriot energies of the land.

And here Boston took the lead. Her records at this time are full of proud memorials. In formal instructions to her representatives, adopted unanimously in Town Meeting at Faneuil Hall, "having been read several times, and put paragraph by paragraph," the following rule of conduct was prescribed.

"We therefore think it our indispensable duty, in justice to ourselves and posterity, as it is our undoubted privilege, in the most open and unreserved, but decent and respectful

[1] Bancroft, History of the United States, Vol. V. p. 332.
[2] Ibid., 349.

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terms, to declare our greatest dissatisfaction with this law: *and we think it incumbent upon you by no means to join in any public measures for countenancing and assisting in the execution of the same,* but to use your best endeavors in the General Assembly to have the inherent, unalienable rights of the people of this Province asserted and vindicated, and left upon the public records, that posterity may never have reason to charge the present times with the guilt of tamely giving them away."[1]

Virginia responded to Boston. Many of her justices of the peace surrendered their commissions, rather than aid in the enforcement of the law, or be "instrumental in the destruction of their country's most essential rights and liberties."[2]

As the opposition deepened, there was a natural tendency to outbreak and violence. But this was carefully restrained. On one occasion, in Boston, it showed itself in the lawlessness of a mob. But the town, at a public meeting in Faneuil Hall, called without delay on the motion of the opponents of the Stamp Act, with James Otis as chairman, condemned the outrage. Eager in hostility to the execution of the Act, Boston cherished municipal order, and constantly discountenanced all tumult, violence, and illegal proceedings. Her equal devotion to these two objects drew the praises and congratulations of other towns. In reply, March 24, 1766, to an Address from the inhabitants of Plymouth, her own consciousness of duty done is thus expressed.

"If the inhabitants of this metropolis have taken *the warrantable and legal measures to prevent that misfortune, of all*

[1] Town Records, MS., September 18; Boston Gazette, September 23, 1765.
[2] Pennsylvania Gazette, October 31, 1765. Annual Register for 1765. p. [53.

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others the most to be dreaded, the execution of the Stamp Act, and, as a necessary means of preventing it, have made any spirited applications for opening the custom-houses and courts of justice, — *if at the same time they have bore their testimony against outrageous tumults and illegal proceedings*, and given any example of the love of peace and good order, next to the consciousness of having done their duty is the satisfaction of meeting with the approbation of any of their fellow-countrymen."[1]

Learn now from the Diary of John Adams the results of this system.

"The year 1765 has been the most remarkable year of my life. That enormous engine, fabricated by the British Parliament, for battering down all the rights and liberties of America, — I mean the Stamp Act, — has raised and spread through the whole continent a spirit that will be recorded to our honor with all future generations. In every Colony, from Georgia to New Hampshire inclusively, the stamp distributors and inspectors have been compelled by the unconquerable rage of the people to renounce their offices. Such and so universal has been the resentment of the people, that every man who has dared to speak in favor of the stamps, or to soften the detestation in which they are held, how great soever his abilities and virtues had been esteemed before, or whatever his fortune, connections, and influence had been, has been seen to sink into universal contempt and ignominy."[2]

The Stamp Act became a dead letter. At the meeting of Parliament numerous petitions were presented, calling for its instant repeal. Franklin, at that time in England, while giving his famous testimony before the

[1] Town Records, MS., March 24; Boston Gazette, March 31, 1766.
[2] Diary, December 18, 1765: Works, Vol. II. p. 154.

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House of Commons, was asked whether he thought the people of America would submit to this Act, if "moderated." His brief, emphatic response was: "No, never, unless compelled by force of arms."[1] Chatham, weak with disease, yet mighty in eloquence, exclaimed in ever memorable words: "The gentleman tells us, America is obstinate, America is almost in open rebellion. *Sir, I rejoice that America has resisted.* Three millions of people, so dead to all the feelings of liberty as voluntarily to submit to be slaves, would have been fit instruments to make slaves of the rest. . . . . The Americans have been wronged; they have been driven to madness by injustice. . . . . Upon the whole, I will beg leave to tell the House what is really my opinion. *It is, that the Stamp Act be repealed, absolutely, totally, and immediately.*"[2] It was repealed. Within less than a year from its original passage, denounced and discredited, it was driven from the Statute Book. In the charnel-house of history, with unclean things of the Past, it now rots. Thither the Slave Act must follow.

Sir, regarding the Stamp Act candidly and cautiously, free from animosities of the time, it is impossible not to see, that, though gravely unconstitutional, it was at most an infringement of *civil* liberty only, not of *personal* liberty. There was an unjust tax of a few pence, with the chance of amercement by a single judge without a jury; but by no provision of this Act was the *personal* liberty of any man assailed. No freeman could be seized under it as a slave. Such an Act, though justly obnoxious to every lover of Constitutional Liberty, cannot be viewed with the feelings of repugnance enkindled by a

[1] Hansard, Parliamentary History, January 28, 1766, Vol. XVI. col. 140.
[2] Ibid., January 14, 1766, Vol. XVI. 104–108.

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statute which assails the personal liberty of every man, and under which any freeman may be seized as a slave. Sir, in placing the Stamp Act by the side of the Slave Act, I do injustice to that emanation of British tyranny. Both infringe important rights: one, of property; the other, the vital right of all, which is to other rights as soul to body, — *the right of a man to himself.* Both are condemned; but their relative condemnation must be measured by their relative characters. As Freedom is more than property, as Man is above the dollar that he earns, as heaven, to which we all aspire, is higher than earth, where every accumulation of wealth must ever remain, so are the rights assailed by an American Congress higher than those once assailed by the British Parliament. And just in this degree must history condemn the Slave Act more than the Stamp Act.

Sir, I might here stop. It is enough, in this place, and on this occasion, to show the unconstitutionality of this enactment. Your duty commences at once. All legislation hostile to the fundamental law of the land should be repealed without delay. But the argument is not yet exhausted. Even if this Act could claim any validity or apology under the Constitution, which it cannot, *it lacks that essential support in the Public Conscience of the States, where it is to be enforced, which is the life of all law, and without which any law must become a dead letter.*

The Senator from South Carolina (Mr. BUTLER) was right, when, at the beginning of the session, he pointedly said that a law which can be enforced only by the bayonet is no law.[1] Sir, it is idle to suppose that

[1] Speech on the Compromise Measures, December 15, 1851: Congressional Globe, Vol. XXIV. p. 98.

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an Act of Congress becomes effective merely by compliance with the forms of legislation. Something more is necessary. The Act must be in harmony with the prevailing public sentiment of the community upon which it bears. I do not mean that the cordial support of every man or of every small locality is necessary; but I do mean that the public feelings, the public convictions, the public conscience, must not be touched, wounded, lacerated, by every endeavor to enforce it. With all these it must be so far in harmony, that, like the laws by which property, liberty, and life are guarded, it may be administered by the ordinary process of courts, without jeoparding the public peace or shocking good men. If this be true as a general rule, if the public support and sympathy be essential to the life of all law, this is especially the case in an enactment which concerns the important and sensitive rights of Personal Liberty. In conformity with this principle, the Legislature of Massachusetts, in 1850, by formal resolution, declared with singular unanimity: —

"We hold it to be the duty of Congress to pass such laws only in regard thereto as will be sustained by the public sentiment of the Free States, where such laws are to be enforced."[1]

The duty of consulting these sentiments was recognized by Washington. While President of the United States, towards the close of his administration, he sought to recover a slave who had fled to New Hampshire. His autograph letter to Mr. Whipple, the Collector at Portsmouth, dated at Philadelphia, 28th November, 1796, which I now hold in my hand, and which

[1] Resolves concerning Slavery, May 1, 1850: Acts and Resolves, 1849–51, p. 519.

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has never before seen the light, after describing the fugitive, and particularly expressing the desire of "her mistress," Mrs. Washington, for her return, employs the following decisive language: —

"I do not mean, however, by this request, that such violent measures should be used AS WOULD EXCITE A MOB OR RIOT, WHICH MIGHT BE THE CASE, IF SHE HAS ADHERENTS, OR EVEN UNEASY SENSATIONS IN THE MINDS OF WELL-DISPOSED CITIZENS. Rather than either of these should happen, I would forego her services altogether, — and the example, also, which is of infinite more importance.

"GEORGE WASHINGTON."

Mr. Whipple, in his reply, dated at Portsmouth, December 22, 1796, an autograph copy of which I have, recognizes the rule of Washington.

"I will now, Sir, agreeably to your desire, send her to Alexandria, *if it be practicable without the consequences which you except, — that of exciting a riot or a mob, or creating uneasy sensations in the minds of well-disposed persons.* The first cannot be calculated beforehand; it will be governed by the popular opinion of the moment, or the circumstances that may arise in the transaction. The latter may be sought into and judged of by conversing with such persons, without discovering the occasion. So far as I have had opportunity, I perceive that different sentiments are entertained on this subject."

The fugitive was never returned, but lived in freedom to a good old age, down to a very recent day, a monument of the just forbearance of him whom we aptly call Father of his Country. True, he sought her return. This we must regret, and find its apology. He was at the time a slaveholder. Often expressing himself with various degrees of force against Slavery,

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and promising his suffrage for its abolition, he did not see this wrong as he saw it at the close of life, in the illumination of another sphere. From this act of Washington, still swayed by the policy of the world, I appeal to Washington writing his will. From Washington on earth I appeal to Washington in heaven. Seek not by his name to justify any such effort. His death is above his life. His last testament cancels his authority as a slaveholder. However he may have appeared before man, he came into the presence of God only as liberator of his slaves. Grateful for this example, I am grateful also, that, while slaveholder, and seeking the return of a fugitive, he has left in permanent record a rule of conduct which, if adopted by his country, will make Slave-Hunting impossible. The chances of riot, or mob, or "even uneasy sensations in the minds of well-disposed citizens," must prevent any such pursuit.[1]

Sir, the existing Slave Act cannot be enforced without violating the precept of Washington. Not merely "uneasy sensations of well-disposed citizens," but rage, tumult, commotion, mob, riot, violence, death, gush from its fatal overflowing fountains: —

> "Hoc fonte derivata clades
> In patriam populumque fluxit."[2]

Not a case occurs without endangering the public peace. Workmen are brutally dragged from employments to which they are wedded by years of successful labor; husbands are ravished from wives, and parents from

[1] The possibility of scandal and commotion was recognized by the great doctor of the Church, St. Thomas Aquinas, as proper to determine human conduct. According to him, an unjust law is not binding in conscience, *nisi forte propter vitandum scandalum vel turbationem.* — *Summa Theologica*, 1ma 2dæ, Quæst. XCVI. art. 4.

[2] Hor., Carm. III. vi. 19, 20.

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children. Everywhere there is disturbance, — at Detroit, Buffalo, Harrisburg, Syracuse, Philadelphia, New York, Boston. At Buffalo the fugitive was cruelly knocked by a log of wood against a red-hot stove, and his mock trial commenced while the blood still oozed from his wounded head. At Syracuse he was rescued by a sudden mob; so also at Boston. At Harrisburg the fugitive was shot; at Christiana the Slave-Hunter was shot. At New York unprecedented excitement, always with uncertain consequences, has attended every case. Again at Boston a fugitive, according to received report, was first seized under base pretext that he was criminal; arrested only after deadly struggle; guarded by officers acting in violation of the State laws; tried in a court-house girdled by chains, contrary to the Common Law; finally surrendered to Slavery by trampling on the criminal process of the State, under an escort in violation again of the laws of the State, while the pulpits trembled, and the whole people, not merely "uneasy," but swelling with ill-suppressed indignation, though, for the sake of order and tranquillity, without violence, witnessed the shameful catastrophe.

Oppression by an individual is detestable; but oppression by law is worse. Hard and inscrutable, when the law, to which the citizen naturally looks for protection, becomes itself a standing peril. As the sword takes the place of the shield, despair settles down like a cloud. Montesquieu painted this most cruel tyranny, when he said that the man is drowned by the very plank on which he thought to escape.[1] And Moses exposes a kindred harshness, when, in commandment to the Israelites, he mysteriously enjoins, "Thou shalt not

[1] Grimm, Correspondance, Février, 1786, Tom. XIV. pp. 453, 454.

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seethe a kid in its mother's milk."[1] Alas! every sacrifice under the form of law is only a repetition of this forbidden offence. The victim is the innocent kid, and the law is its mother's milk.

With every attempt to administer the Slave Act, it constantly becomes more revolting, particularly in its influence on the agents it enlists. Pitch cannot be touched without defilement, and all who lend themselves to this work seem at once and unconsciously to lose the better part of man. The spirit of the law passes into them, as the devils entered the swine. Upstart commissioners, mere mushrooms of courts, vie and revie with each other. Now by indecent speed, now by harshness of manner, now by denial of evidence, now by crippling the defence, and now by open, glaring wrong, they make the odious Act yet more odious. Clemency, grace, and justice die in its presence. All this is observed by the world. Not a case occurs which does not harrow the souls of good men, bringing tears of sympathy to the eyes, and those other noble tears which "patriots shed o'er dying laws."

Sir, I shall speak frankly. If there be an exception to this feeling, it will be found chiefly with a peculiar class. It is a sorry fact, that the "mercantile interest," in unpardonable selfishness, twice in English history, frowned upon endeavors to suppress the atrocity of Algerine Slavery, that it sought to baffle Wilberforce's great effort for the abolition of the African slave-trade, and that, by a sordid compromise, at the formation of our Constitution, it exempted the same detested, Heaven-defying traffic from American judgment. And now representatives of this "interest," forgetful that Commerce

[1] Deuteronomy, xiv. 21.

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is born of Freedom, join in hunting the Slave. But the great heart of the people recoils from this enactment. It palpitates for the fugitive, and rejoices in his escape. Sir, I am telling you facts. The literature of the age is all on his side. Songs, more potent than laws, are for him. Poets, with voices of melody, sing for Freedom. Who could tune for Slavery? They who make the permanent opinion of the country, who mould our youth, whose words, dropped into the soul, are the germs of character, supplicate for the Slave. And now, Sir, behold a new and heavenly ally. A woman, inspired by Christian genius, enters the lists, like another Joan of Arc, and with marvellous power sweeps the popular heart. Now melting to tears, and now inspiring to rage, her work everywhere touches the conscience, and makes the Slave-Hunter more hateful. In a brief period, nearly one hundred thousand copies of "Uncle Tom's Cabin" have been already circulated.[1] But this extraordinary and sudden success, surpassing all other instances in the records of literature, cannot be regarded as but the triumph of genius. Better far, it is the testimony of the people, by an unprecedented act, against the Fugitive Slave Bill.

These things I dwell upon as incentives and tokens of an existing public sentiment, rendering this Act practically inoperative, except as a tremendous engine of horror. Sir, the sentiment is just. Even in the lands of Slavery, the slave-trader is loathed as an ignoble character, from whom the countenance is turned away; and can the Slave-Hunter be more regarded, while pursuing his prey in a land of Freedom? In early Europe, in

[1] This was the number at the delivery of this speech. But the circulation has gone on indefinitely.

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barbarous days, while Slavery prevailed, a Hunting Master — *nachjagender Herr*, as the Germans called him — was held in aversion. Nor was this all. The fugitive was welcomed in the cities, and protected against pursuit. Sometimes vengeance awaited the Hunter. Down to this day, at Revel, now a Russian city, a sword is proudly preserved with which a Hunting Baron was beheaded, who, in violation of the municipal rights of the place, seized a fugitive slave. Hostile to this Act as our public sentiment may be, it exhibits no similar trophy. The State laws of Massachusetts have been violated in the seizure of a fugitive slave; but no sword, like that of Revel, now hangs at Boston.

I have said, Sir, that this sentiment is just. And is it not? Every escape from Slavery necessarily and instinctively awakens the regard of all who love Freedom. The endeavor, though unsuccessful, reveals courage, manhood, character. No story is read with greater interest than that of our own Lafayette, when, aided by a gallant South Carolinian, in defiance of despotic Austrian ordinances, kindred to our Slave Act, he strove to escape from the bondage of Olmütz. Literature pauses with exultation over the struggles of Cervantes, the great Spaniard, while a slave in Algiers, to regain the liberty for which he declared to his companions "we ought to risk life itself, Slavery being the greatest evil that can fall to the lot of man."[1] Science, in all her manifold triumphs, throbs with pride and delight, that Arago, astronomer and philosopher, — devoted republican also, — was rescued from barbarous Slavery to become one of her greatest sons. Religion rejoices serenely, with joy unspeakable, in the final escape of Vin-

[1] Navarrete, Vida de Cervantes, p 38.

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cent de Paul. In the public square of Tunis, exposed to the inspection of traffickers in human flesh, this illustrious Frenchman was subjected to every vileness of treatment, compelled, like a horse, to open his mouth, to show his teeth, to trot, to run, to exhibit his strength in lifting burdens, and then, like a horse, legally sold in market overt. Passing from master to master, after protracted servitude, he achieved his freedom, and, regaining France, commenced that resplendent career of charity by which he is placed among the great names of Christendom. Princes and orators have lavished panegyric upon this fugitive slave, and, in homage to his extraordinary virtues, the Catholic Church has introduced him into the company of Saints.

Less by genius or eminent service than by suffering are the fugitive slaves of our country now commended. For them every sentiment of humanity is aroused.

> "Who could refrain,
> That had a heart to love, and in that heart
> Courage to make his love known?"

Rude and ignorant they may be; but in their very efforts for Freedom they claim kindred with all that is noble in the Past. Romance has no stories of more thrilling interest. Classical antiquity has preserved no examples of adventure and trial more worthy of renown. They are among the heroes of our age. Among them are those whose names will be treasured in the annals of their race. By eloquent voice they have done much to make their wrongs known, and to secure the respect of the world. History will soon lend her avenging pen. Proscribed by you during life, they will proscribe you through all time. Sir, already judgment is beginning. A righteous public sentiment palsies your enactment.

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And now, Sir, let us review the field over which we have passed. We have seen that any compromise, finally closing the discussion of Slavery under the Constitution, is tyrannical, absurd, and impotent; that, as Slavery can exist only by virtue of positive law, and as it has no such positive support in the Constitution, it cannot exist within the national jurisdiction; that the Constitution nowhere recognizes property in man, and that, according to its true interpretation, Freedom and not Slavery is national, while Slavery and not Freedom is sectional; that in this spirit the National Government was first organized under Washington, himself an Abolitionist, surrounded by Abolitionists, while the whole country, by its Church, its Colleges, its Literature, and all its best voices, was united against Slavery, and the national flag at that time nowhere within the National Territory covered a single slave; still further, that the National Government is a Government of delegated powers, and, as among these there is no power to support Slavery, this institution cannot be national, nor can Congress in any way legislate in its behalf; and, finally, that the establishment of this principle is the true way of peace and safety for the Republic. Considering next the provision for the surrender of fugitives from service, we have seen that it was not one of the original compromises of the Constitution; that it was introduced tardily and with hesitation, and adopted with little discussion, while then and for a long period thereafter it was regarded with comparative indifference; that the recent Slave Act, though many times unconstitutional, is especially so on two grounds, — *first*, as a usurpation by Congress of powers not granted by the Constitution, and an infraction of rights secured to the

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States, and, *secondly*, as the denial of Trial by Jury, in a question of Personal Liberty and a suit at Common Law; that its glaring unconstitutionality finds a prototype in the British Stamp Act, which our fathers refused to obey as unconstitutional on two parallel grounds, — *first*, because it was a usurpation by Parliament of powers not belonging to it under the British Constitution, and an infraction of rights belonging to the Colonies, and, *secondly*, because it was the denial of Trial by Jury in certain cases of property; that, as Liberty is far above property, so is the outrage perpetrated by the American Congress far above that perpetrated by the British Parliament; and, finally, that the Slave Act has not that support, in the public sentiment of the States where it is to be executed, which is the life of all law, and which prudence and the precept of Washington require.

Sir, thus far I have arrayed the objections to this Act, and the false interpretations out of which it has sprung. But I am asked what I offer as a substitute for the legislation which I denounce. Freely I answer. It is to be found in a correct appreciation of the provision of the Constitution under which this discussion occurs. Look at it in the double light of Reason and of Freedom, and we cannot mistake the exact extent of its requirements. Here is the provision: —

"No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due."

From the very language employed, it is obvious that this is merely a *compact* between the States, with a *pro-*

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hibition on the States, *conferring no power on the Nation.* In its natural signification it is a compact. According to examples of other countries, and principles of jurisprudence, it is a compact. Arrangements for extradition of fugitives have been customarily compacts. Except under express obligations of treaty, no nation is bound to surrender fugitives. Especially has this been the case with fugitives for Freedom. In mediæval Europe cities refused to recognize this obligation in favor of persons even under the same National Government. In 1531, while the Netherlands and Spain were united under Charles the Fifth, the Supreme Council of Mechlin rejected an application from Spain for the surrender of a fugitive slave. By express compact alone could this be secured. But the provision of the Constitution was borrowed from the Ordinance of the Northwestern Territory,[1] which is expressly declared to be a compact; and this Ordinance, finally drawn by Nathan Dane, was itself borrowed, in distinctive feature, from the early institutions of Massachusetts, among which, as far back as 1643, was a compact of like nature with other New England States.[2] Thus this provision is a compact

[1] "ART. VI. There shall be neither slavery nor involuntary servitude in the said Territory, otherwise than in the punishment of crimes whereof the party shall have been duly convicted: Provided always, that any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her labor or service as aforesaid." — *Ordinance for the Government of the Territory Northwest of the River Ohio*, July 13, 1787: Journals of Congress, Vol. XII. pp. 92, 93.

[2] "8. . . . . It is also agreed, that if any servant run away from his master into any of the confederate jurisdictions, that in such case (upon certificate from one magistrate in the jurisdiction out of which the said servant fled, or upon other due proof) the said servant shall be either delivered to his master or any other that pursues and brings such certificate and proof." — *Articles of Confederation between the Plantations*, etc., May 29, 1643: Hubbard's History of New England, p. 472.

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in language, in nature, in its whole history; as we have already seen, it is a compact according to the intentions of our fathers and the genius of our institutions.

As a compact, its execution depends absolutely upon the States, without any intervention of the Nation. *Each State, in the exercise of its own judgment, will determine for itself the precise extent of obligation assumed.* As a compact in derogation of Freedom, it must be construed strictly in every respect, leaning always in favor of Freedom, and shunning any meaning, not clearly necessary, which takes away important personal rights; mindful that the parties to whom it is applicable are regarded as "persons," of course with all the rights of "persons," under the Constitution; especially mindful of the vigorous maxim of the Common Law, early announced by Fortescue, that "he is to be adjudged impious and cruel who does not favor Liberty"[1]; and also

[1] De Laudibus Legum Angliæ, Cap. XLII.; Coke upon Littleton, 124 *b*. Granville Sharp, in the remarkable testimony already cited (*ante*, p. 108), quotes Fortescue thus: "For in behalf of Liberty human nature always implores: because *Slavery is introduced by man*, and *for vice*: but *Liberty* is implanted *by God* in the very nature of *man*: wherefore, when stolen by man, it always earnestly longs to return; as does everything which is deprived of *natural liberty*. For which reason the *man* who does *not favor Liberty* is to be adjudged *impious* and *cruel*. The laws of England acknowledging these principles give favor to *Liberty in every case*." After this extract from Fortescue, we are reminded that "Slavery is properly declared by one of our oldest English authorities in law, Fleta, to be *contrary to Nature* (Fleta, 2d edit. p. 1), which expression of Fleta is really a maxim of the Civil or Roman Law"; and then Sharp predicts the time when "our deluded statesmen, lawyers, commercial politicians, and planters shall be compelled to understand that a more forcible expression of illegality and iniquity could not have been used than that by which Slavery is defined in the Roman code, as well as by our English Fleta, *i. e.* that it is *contra naturam*, against Nature; for, consequently, it must be utterly illegal, a crime which by the first foundation of English law is justly deemed both *impious* and *cruel*"; and he adds, "The severity of these expressions cannot be restrained without injustice to the high authorities on which this argument is founded." (Letter to the Maryland Society for Promoting the Abolition of Slavery, etc.,

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completely adopting, in letter and spirit, as becomes a just people, the rule of the great Commentator, that "the law is always ready to catch at anything in favor of Liberty."[1] With this key the true interpretation is natural and easy.

Briefly, the States are prohibited from any "law or regulation" by which any "person" escaped from "service or labor" may be discharged therefrom, and on establishment of the claim to such "service or labor" he is to be "delivered up." But the mode by which the claim shall be tried and determined is not specified. All this is obviously within the control of each State. It may be by virtue of express legislation; in which event, any Legislature, justly careful of Personal Liberty, would surround the fugitive with every shield of Law and Constitution. But here a fact pregnant with Freedom must be studiously observed. The name *Slave* — that litany of wrong and woe — does not appear in the clause. Here is no unambiguous phrase, incapable of a double sense, — no "positive" language, applicable only to slaves, and excluding all other classes, — no word of that absolute certainty in every particular which forbids any interpretation except that of Slavery, and makes it impossible "to catch at anything in favor of Liberty." Nothing of this kind is here. But, passing from this, — "impiously and cruelly" renouncing for the moment all leanings for Freedom, — refusing "to catch at anything

pp. 6 – 8.) This testimony of the great English Abolitionist is reinforced, especially with regard to fugitive slaves, when we consider its publication in 1793 by the Abolition Society of Maryland, with the prefatory observation, that, "in the case of slaves escaping from their masters, the friends of universal liberty are often embarrassed in their conduct by a conflict between their principles and *the obligations imposed by unwise and perhaps unconstitutional laws.*"

[1] Blackstone, Commentaries, Vol. II. p. 94.

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in favor of Liberty," — abandoning the cherished idea of the Fathers, that it was "*wrong* to admit in the Constitution the idea that there could be property in men," — and, in the face of these commanding principles, assuming two things, — first, that, in the evasive language of this clause, the Convention, whatever may have been the aim of individual members, really intended fugitive slaves, which is sometimes questioned, and, secondly, that, if they so intended, the language employed can be judicially regarded as justly applicable to fugitive slaves, which is often and earnestly denied, — then the whole proceeding, without any express legislation, may be left to ancient and authentic forms of the Common Law, familiar to the framers of the Constitution, and ample for the occasion. If the fugitive be seized without process, he will be entitled at once to his writ *de Homine Replegiando,* while the master, resorting to process, may find his remedy in the writ *de Nativo Habendo,* each requiring trial by jury. If, from ignorance or lack of employment, these processes have slumbered in our country, still they belong to the great arsenal of the Common Law, and continue, like other ancient writs, *tanquam gladius in vagina,* ready to be employed at the first necessity. They belong to the safeguards of the citizen. But in any event, and in either alternative, the proceeding would be by "suit at Common Law," with Trial by Jury; and it would be the solemn duty of the court, according to all the forms and proper delays of the Common Law, to try the case on the evidence, strictly to apply all protecting rules of evidence, and especially to require stringent proof, by competent witnesses under cross-examination, that the person claimed was *held* to service, that his service was *due*

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to the claimant, that he had *escaped* from the State where such service was due, and also proof of the *laws* of the State under which he was held. *Still further, to the Courts of each State must belong the determination of the question, to what class of persons, according to just rules of interpretation, the phrase "person held to service or labor" is strictly applicable.*

Such is this much debated provision. The Slave States, at the formation of the Constitution, did not propose, as in cases of Naturalization and Bankruptcy, to empower the National Government *to establish an uniform rule* for the rendition of fugitives from service, *throughout the United States;* they did not ask the National Government to charge itself in any way with this service; they did not venture to offend the country, and particularly the Northern States, by any such assertion of hateful pretension. They were content, under the sanctions of compact, in leaving it to the public sentiment of the States. There, I insist, it must remain.

Mr. President, I have occupied much time; but the great subject still stretches before us. One other point yet remains, which I must not leave untouched, and which justly belongs to the close. The Slave Act violates the Constitution, and shocks the Public Conscience. With modesty, and yet with firmness, let me add, Sir, it offends against the Divine Law. No such enactment is entitled to support. As the throne of God is above every earthly throne, so are his laws and statutes above all the laws and statutes of man. To question these is to question God himself. But to assume that human laws are beyond question is to claim for their fallible authors infallibility. To assume that they are always

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we suffer ourselves to be drawn by any compact into opposition to God. Such is the rule of morals. Such, also, by the lips of judges and sages, is the proud declaration of English law, whence our own is derived. In this conviction, patriots have braved unjust commands, and martyrs have died.

And now, Sir, the rule is commended to us. The good citizen, who sees before him the shivering fugitive, guilty of no crime, pursued, hunted down like a beast, while praying for Christian help and deliverance, and then reads the requirements of this Act, is filled with horror. Here is a despotic mandate "to aid and assist in the prompt and efficient execution of this law."[1] Again let me speak frankly. Not rashly would I set myself against any requirement of law. This grave responsibility I would not lightly assume. But here the path of duty is clear. By the Supreme Law, which commands me to do no injustice, by the comprehensive Christian Law of Brotherhood, *by the Constitution, which I have sworn to support,* I AM BOUND TO DISOBEY THIS ACT. Never, in any capacity, can I render voluntary aid in its execution. Pains and penalties I will endure, but this great wrong I will not do. "Where I cannot obey actively, there I am willing to lie down and to suffer what they shall do unto me": such was the exclamation of him to whom we are indebted for the "Pilgrim's Progress," while in prison for disobedience to an earthly statute.[2] Better suffer injustice than do it. Better vic-

[1] Fugitive Slave Act, September 18, 1850, Sec. 5.

[2] Relation of the Imprisonment of Mr. John Bunyan, written by Himself: Works (Glasgow, 1853), Vol. I. pp. 59, 60. Balmez, the Spanish divine, whose vindication of the early Catholic Church is a remarkable monument, declares, after careful discussion, "that the rights of the civil power are limited, that there are things beyond its province, — cases in which a man may

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tim than instrument of wrong. Better even the poor slave returned to bondage than the wretched Commissioner.

There is, Sir, an incident of history which suggests a parallel, and affords a lesson of fidelity. Under the triumphant exertions of that Apostolic Jesuit, St. Francis Xavier, large numbers of Japanese, amounting to as many as two hundred thousand, — among them princes, generals, and the flower of the nobility, — were converted to Christianity. Afterwards, amidst the frenzy of civil war, religious persecution arose, and the penalty of death was denounced against all who refused to trample upon the effigy of the Redeemer. This was the Pagan law of

say, and ought to say, *I will not obey.*" (Protestantism and Catholicity Compared, Ch. 54.) Devices to avoid the enforcement of unjust laws illustrate this righteous disobedience, — as where English juries, before the laws had been made humane, found an article stolen to be less than five shillings in value, in order to save the criminal from capital punishment. In the Diary of John Adams, December 14, 1779, at Ferrol, in Spain, there is a curious instance of law requiring that a convicted parricide should be headed up in a hogshead with an adder, a toad, a dog, and a cat, and then cast into the sea; but in a case that had recently occurred the barbarous law was evaded by painting these animals on a hogshead containing the dead body of the criminal. (Works, Vol. III. p. 233.) In similar spirit, the famous President Jeannin, high in the magistracy and diplomacy of France, when called to a consultation on a mandate of Charles the Ninth, at the epoch of St. Bartholomew, said, "We must obey the sovereign slowly, when he commands in anger"; and he concluded by asking "letters patent before executing orders so cruel." (Biographie Universelle, art. *Jeannin* (*Pierre.*) The remark of Casimir Périer, when Prime-Minister, to Queen Hortense, that it might be "legal" for him to arrest her, but not "just," makes the same distinction. (Guizot, Mémoires pour servir à l'Histoire de mon Temps, Tom. II. p. 219. See *ante*, Vol. II. pp. 398, 399.) The case is stated with perfect moderation by Grotius, when he says that human laws have *a binding force* only when they are made in a humane manner, not if they impose a burden which is plainly abhorrent to reason and Nature, — *non si onus injungant quod a ratione et natura plane abhorrent.* (De Jure Belli ac Pacis, Lib. III. Cap. XXIII. v. 3; also Lib. I. Cap. IV. vii. 2, 3.) These latter words aptly describe the "burden" imposed by the Slave Act.

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a Pagan land. But the delighted historian records, that from the multitude of converts scarcely one was guilty of this apostasy. The law of man was set at nought. Imprisonment, torture, death, were preferred. Thus did this people refuse to trample on the painted image. Sir, multitudes among us will not be less steadfast in refusing to trample on the living image of their Redeemer.

Finally, Sir, for the sake of peace and tranquillity, cease to shock the Public Conscience; for the sake of the Constitution, cease to exercise a power nowhere granted, and which violates inviolable rights expressly secured. Leave this question where it was left by our fathers, at the formation of our National Government, — in the absolute control of the States, the appointed guardians of Personal Liberty. Repeal this enactment. Let its terrors no longer rage through the land. Mindful of the lowly whom it pursues, mindful of the good men perplexed by its requirements, in the name of Charity, in the name of the Constitution, repeal this enactment, totally and without delay. There is the example of Washington; follow it. There also are words of Oriental piety, most touching and full of warning, which speak to all mankind, and now especially to us: "Beware of the groans of wounded souls, since the inward sore will at length break out. Oppress not to the utmost a single heart; for a solitary sigh has power to overturn a whole world."

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ANDREW J. DOWNING, THE LANDSCAPE GARDENER.

SPEECH IN THE SENATE, IN FAVOR OF AN ALLOWANCE TO THE WIDOW OF THE LATE ANDREW J. DOWNING, AUGUST 26, 1852.

THE Civil and Diplomatic Appropriation Bill being under consideration, Mr. Pearce, of Maryland, under instructions from the Committee on Finance, moved the following amendment: —

"For the payment of the arrears of salary due to the late Rural Architect, A. J. Downing, deceased, from the 1st of May, 1852, to the date of his death, and a further allowance to his widow, equal to the salary for one year, $2,500: *Provided*, that the said sum shall be in full of all claim for the services of the said deceased, and for all models, specifications, and drawings, designed for the benefit of the United States, which are not in its possession."

In the course of the debate which ensued, Mr. Sumner spoke as follows.

MR. PRESIDENT, — The laborer is worthy of his hire; and I believe at this moment there is no question of charity to the widow of the late Mr. Downing. The simple proposition is, to make compensation for services rendered to the United States by this eminent artist as superintendent of the public grounds in Washington. And since the plans he has left behind and the impulse he has given to improvements here by his remarkable genius will continue to benefit us, though he has been removed, it is thought reasonable to continue his salary to the close of the unexpired year from which it commenced. These plans alone have been valued at five thousand dollars, and we are to have the advantage of them. In pursuance of these,

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his successor will be able to proceed in arranging the public grounds, and in embellishing the national capital, without further expenditure for others. Thus, as I said at the outset, it is not a question of charity, but of compensation; and on this ground I doubt not the estate of the departed artist deserves the small pittance it is proposed to pay. For myself, I should be much happier to vote a larger appropriation, believing, that, over and above the services actually rendered in the discharge of his duties, these plans are amply worth it, and that we shall all feel better by such recognition of our debt.

Few men in the public service have vindicated a title to regard above Mr. Downing. At the age of thirty-seven he has passed away, "dead ere his prime," — like Lycidas, also, "floating upon his watery bier,"[1] — leaving behind a reputation above that of any other citizen in the beautiful department of Art to which he was devoted. His labors and his example cannot be forgotten. I know of no man among us, in any sphere of life, so young as he was at his death, who has been able to perform services of such true, simple, and lasting beneficence. By wide and active superintendence of rural improvements, by labors of the pen, and by the various exercise of his genius, he has contributed essentially to the sum of human happiness. And now, Sir, by practical services here in Washington, rendered at the call of his country, he has earned, it seems to me, this small appropriation, not as a charity to his desolate widow, but as a remuneration for labor done. I hope the amendment will be agreed to.

[1] Mr. Downing was accidentally drowned in the Hudson River.

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THE PARTY OF FREEDOM: ITS NECESSITY AND PRACTICABILITY.

SPEECH AT THE STATE CONVENTION OF THE FREE-SOIL PARTY OF MASSACHUSETTS, HELD AT LOWELL, SEPTEMBER 15, 1852.

THE annual State Convention of the Free-Soil Party of Massachusetts met at Lowell September 15, 1852. It was organized with the following officers: Hon. Stephen C. Phillips, of Salem, President, — Rodney French, of New Bedford, George B. Atwood, of Taunton, William Jackson, of Newton, George F. Williams, of Boston, Charles Beck, of Cambridge, John B. Alley, of Lynn, Benjamin F. Thompson, of Winchester, John Nesmith, of Lowell, John Edgell, of Gardner, Francis Bates, of Springfield, Calvin Marden, of Pittsfield, Vice-Presidents, — George M. Brooks, of Concord, Edmund Anthony, of New Bedford, William S. Robinson, of Lowell, Andrew J. Aiken, of Adams, Benjamin F. White, of Weymouth, Secretaries.

Eloquent speeches were made by the President, Hon. S. C. Phillips, Hon. Henry Wilson, Hon. John W. Graves, Hon. E. L. Keyes, Hon. Rodney French, Dr. Caleb Swan, Richard H. Dana, Jr., Esq., Hon. Horace Mann, Hon. Amasa Walker, Hon. Anson Burlingame, and Seth Webb, Jr., Esq. The resolutions adopted by the Convention were reported by Hon. C. F. Adams. Hon. Horace Mann was nominated as candidate for Governor, and Hon. Amasa Walker as candidate for Lieutenant-Governor.

Early in the proceedings Mr. Sumner was introduced to the audience by the President. This incident is copied from the report in the papers, as is also the speech which he made, with the interruptions.

"The President remarked, that there was one gentleman present whom the Convention would all delight to hear: he alluded to our distinguished Senator in Congress, Hon. Charles Sumner.

"The name of Mr. Sumner was received with 'three times three' rousing cheers, and the waving of hats, canes, handkerchiefs, &c.; which demonstrations of regard were renewed as he made his appearance on the platform."

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Among those on the platform was Captain Drayton, called "The Hero of the Pearl," recently liberated from prison through the exertions of Mr. Sumner (*ante*, p. 49), who took his seat "amid the hearty cheers of the whole assembly."

MR. PRESIDENT, AND FELLOW-CITIZENS OF MASSACHUSETTS: —

I SHOULD be dull indeed, — dull as a weed, — were I insensible to this generous, heart-speaking welcome. After an absence of many months, I have now come home to breathe anew this invigorating Northern air [*applause*], to tread again the free soil of our native Massachusetts [*cheers*], and to enjoy the sympathy of friends and fellow-citizens. [*Renewed applause.*] But, while glad in your greetings, thus bounteously lavished, I cannot accept them for myself. I do not deserve them. They belong to the cause [*applause*] which we all have at heart, and which binds us together. [*Cheers.*]

Fellow-citizens, I have not come here to make a speech. The occasion requires no such effort. Weary with other labors, and desiring rest, I have little now to say, — and that little will be too much, if about myself. If, at Washington, during a long session of Congress, — my first experience of public life, — I have been able to do anything which meets your acceptance, I am happy. [*Cheers.*] I have done nothing but my duty. ["*Hear! hear!*"] Passing from this, and taking advantage of the kind attention with which you honor me, let me add one word in vindication of our position as a *national party.*

We are on the eve of two important elections, — one of National officers, and the other of State officers. A President and Vice-President of the United States and members of Congress are to be chosen; also, Governor

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and Lieutenant-Governor of the Commonwealth, and members of the Legislature. And at these elections we are to cast our votes so as most to advance the cause of Freedom under the National Constitution. [*Cheers.*] This is our peculiar object, — though associated with it are other aims, kindred in their humane and liberal character.

Against Freedom both the old parties are banded. Opposed to each other in the contest for power, they concur in opposing every effort for the establishment of Freedom under the National Constitution. [*Applause.*] Divided as parties, *they are one* as supporters of Slavery. On this question we can have no sympathy with either, but must necessarily be against both. ["*Hear! hear!*"] They sustain Slavery in the District of Columbia: we are against it. They sustain the coastwise Slave-Trade under the National Flag: we abhor it. [*Cheers.*] They sustain the policy of silence on Slavery in the Territories: we urge the voice of positive prohibition. They sustain that paragon of legislative monsters, — unconstitutional, unchristian, and infamous, — the Fugitive Slave Bill [*sensation*]: we insist on its repeal. [*Great applause.*] They concede to the Slave Power new life and protection: we cannot be content except with its total destruction. [*Enthusiasm.*] Such, fellow-citizens, is the difference between us.

And now, if here in Massachusetts there be any who, on grounds of policy or conscience, feel impelled to support Slavery, let them go and sink in the embrace of the old parties. [*Applause.*] There they belong. On the other hand, all sincerely opposed to Slavery, who desire to act against Slavery, who seek to bear their testimony for Freedom, who long to carry into public

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affairs those principles of morality and Christian duty which are the rule of private life, — let them come out from both the old parties, and join us. [*Cheers.*] In our organization, with the declared friends of Freedom, they will find a place in harmony with their aspirations. [*Enthusiasm.*]

There is one apology, common to the supporters of both the old parties, and often in their mouths, when pressed for inconsistent persistence in adhering to these parties. It is dogmatically asserted that there can be but two parties, — that a new party is impossible, particularly in our country, — and that, therefore, all persons, however opposed to Slavery, must be content in one of the old parties. This assumption, which is without foundation in reason, is so often put forth, that it has acquired a certain currency; and many, who reason hastily, or implicitly follow others, have adopted it as the all-sufficient excuse for their conduct. Confessing their own opposition to Slavery, they yield to the domination of party, and become dumb. All this is wrong morally, and therefore must be wrong practically.

Party, in its true estate, is the natural expression and agency of different forms of opinion on important public questions, and itself assumes different forms precisely according to the prevalence of different opinions. Thus, in the early Italian republics there were for a while the factions of Guelphs and Ghibellines, rival supporters of Pope and Emperor, — also of Whites and Blacks, taking their names from the color of their respective badges, — and in England, the two factions of the White and Red Roses, in which was involved the succession to the crown. In all these cases the party came into being, died out, or changed with the objects originating it.

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If there be in a community only two chief antagonist opinions, then there will be but two parties embodying these opinions. But as other opinions practically prevail and seek vent, so must parties change or multiply. This is so strongly the conclusion of reason and philosophy, that it could not be doubted, even if there were no examples of such change and multiplicity. But we need only turn to the recent history of France and England, the two countries where opinion has the freest scope, to find such examples.

Thus, for instance, in France, — and I dwell on this point because I have myself observed, in conversation, that it is of practical importance, — under Louis Philippe, anterior to the late Republic, there was the party of Legitimists, supporters of the old branch of Bourbons, and the party of Orleanists, supporters of the existing throne: these two corresponding at the time, in relative rank and power, to our Whigs and Democrats. Besides these was a third party, *the small band of Republicans, represented in the Legislature by a few persons only*, but strong in principles and purposes, which in February, 1848, prevailed over both the others. [*Applause.*] On the establishment of the Republic, the multiplication of parties continued, until, with the freedom of opinion and the freedom of the press, all were equally overthrown by Louis Napoleon, and their place supplied by the enforced unity of despotism.

In England, the most important measure of recent reform, the abolition of the laws imposing a protective duty on corn, was carried only by a third party. Neither of the two old parties could be brought to adopt this measure and press it to consummation. A powerful public opinion, thwarted in the regular parties, had

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recourse to a new one, neither Whig nor Tory, but formed from both the old ones, where Sir Robert Peel, the great Conservative leader, took his place, side by side, in honorable coalition, with Mr. Cobden, the great Liberal leader. ["*Hear! hear!*"] In this way the Corn Laws were finally overthrown. The multiplicity of parties engendered by this contest still continues in England. At the general election for the new Parliament which has just taken place, the strict lines of ancient parties seemed to be effaced, and many were returned, not as Whigs and Tories, but as Protectionists and Anti-Protectionists.

Thus by example in our own day we confirm the principle of political philosophy, that parties naturally adapt themselves in character and number to prevailing public opinion.

At the present time, in our country, there exists a deep, controlling, conscientious feeling against Slavery. [*Cheers.*] You and I, Sir, and all of us, confess it. While recognizing the Constitution, we desire to do everything in our power to relieve ourselves of responsibility for this terrible wrong. ["*Yes! yes!*"] We would vindicate the Constitution, and the National Government it has established, from all participation in this outrage. [*Cheers.*] Both the old political parties, forgetful of the Fathers, and of the spirit of the Constitution, not only refuse to be agents or representatives in any degree of our convictions, but expressly discourage and denounce them. Thus baffled in effort for utterance, these convictions naturally seek expression in a new agency, *the party of Freedom.* [*Cheers.*] Such is the party, representing the great doctrines of Human Rights, as enunciated in our Declaration of Indepen-

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dence, and inspired by a truly Democratic sentiment, now assembled here under the name of the Free Democracy. [*Cheers.*]

The rising public opinion against Slavery cannot flow in the old political channels. It is impeded, choked, and dammed back. But if not *through* the old parties, then *over* the old parties [*tremendous cheering*], this irresistible current *shall* find its way. [*Enthusiasm.*] It cannot be permanently stopped. If the old parties will not become its organs, they must become its victims. [*Cheers.*] The party of Freedom will certainly prevail. [*Sensation.*] It may be by entering into and possessing one of the old parties, filling it with our own strong life; or it may be by drawing to itself the good and true from both who are unwilling to continue in a political combination when it ceases to represent their convictions; but, in one way or the other, its ultimate triumph is sure. [*Great applause.*] Of this let no man doubt. [*Repeated cheers.*]

At this moment we are in a minority. At the last popular election in Massachusetts, there were twenty-eight thousand Free-Soilers, forty-three thousand Democrats, and sixty-four thousand Whigs. But this is no reason for discouragement. According to recent estimates, the population of the whole world amounts to about eight hundred millions. Of these only two hundred and sixty millions are Christians, while the remaining five hundred and forty millions are mainly Mahometans, Brahmins, and Idolaters. Because the Christians are in this minority, that is no reason for renouncing Christianity, and for surrendering to the false religions [*cheers*]; nor do we doubt that Christianity will yet prevail over the whole earth, as the waters

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cover the sea. ["*Hear! hear!*"] The friends of Freedom in Massachusetts are likewise in a minority; but they will not therefore renounce Freedom [*cheers*], nor surrender to the political Mahometans, Brahmins, and Idolaters of Baltimore ["*Never! never!*"]; nor can they doubt that their cause, like Christianity, will yet prevail. [*Enthusiastic cheers.*]

Our party commends itself. But it is also commended by our candidates. [*Cheers.*] In all that makes the eminent civilian or the accomplished statesman fit for the responsibilities of government, they will proudly compare with any of their competitors [*applause*], while they are dear to our hearts as able, well-tried, loyal supporters of those vital principles which we seek to establish under the Constitution of the United States. [*Applause.*] In the Senate, Mr. Hale [*cheers*] is admitted to be foremost in aptitude and readiness for debate, whether in the general legislation of the country, or in constant and valiant championship of our cause. [*Applause.*] His genial and sun-like nature irradiates the antagonism of political controversy [*cheers*], while his active and practical mind, richly stored with various experience, never fails to render good service. [*Great cheering.*]

Of Mr. Julian, our candidate for the Vice-Presidency, ["*Hear! hear!*"] let me say simply, that, in ability and devotion to our principles, he is a worthy compeer of Mr. Hale. To vote for such men will itself be a pleasure. But it will be doubly so, when we reflect that in this way we do something to accomplish a noble work, with which the happiness, welfare, and fame of our country are indissolubly connected. [*Repeated and enthusiastic cheers.*]

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With such a cause and such candidates, no man can be disheartened. The tempest may blow, — but ours is a life-boat, not to be harmed by wind or wave. The Genius of Liberty sits at the helm. I hear her voice of cheer, saying, "Whoso sails with me comes to shore!"

Mr. Sumner resumed his seat amid heartiest and long-protracted applause.

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CIVIL SUPERINTENDENTS OF ARMORIES.

SPEECH IN THE SENATE, ON THE PROPOSITION TO CHANGE THE SUPERINTENDENTS OF ARMORIES, FEBRUARY 23, 1853.

THE Army Appropriation Bill being under discussion, Mr. Davis, of Massachusetts, moved the following amendment: —

"That from and after the first day of July next, the Act of Congress approved August 23, 1842, be so modified, that the President may, if in his opinion the public interest demands it, place over any of the armories a superintendent who does not belong to the Army."

In the course of the debate, Mr. Sumner spoke as follows.

MR. PRESIDENT, — I do not desire to speak upon the general subject of the manufacture of arms under the authority of the United States, which has been opened in debate by honorable Senators. What I have to say will be on the precise question before the Senate, and nothing else. That question, as I understand it, is on the amendment proposed by my colleague [Mr. DAVIS], according to which the Act of 1842 is to be so far modified, that the President, in his discretion, may place over the armories persons not of the army, — leaving it, therefore, to his judgment whether the superintendent shall be a military man or a civilian. This is all.

The Senate is exhorted not to act precipitately. But the character of this proposition excludes all idea of precipitation. We do not determine absolutely that the system shall be changed, but simply that it may be changed in the discretion of the President. This discretion, which will be exercised only after ample inquiry,

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stands in the way of all precipitation; and this is my answer to the Senator from Illinois [Mr. SHIELDS].

Again, it is urged, that under a military head the armories are better administered than they would be under a civil head, and that the arms are better and cheaper; and here my friend from South Carolina, who sits before me [Mr. BUTLER], dwelt with his accustomed glow upon the success with which this manufacture is conducted at the national armories, and the extent to which it is recognized in Europe. But, Sir, in the precise question before you the merits of the armories are not involved. We do not undertake to judge the military superintendents or their works. The determination of this question is referred to the President; and this is my answer to the Senator from South Carolina.

The objections to this amendment of my colleague, then, seem to disappear. But there are two distinct arguments in its favor, which, at the present moment, do not seem to me susceptible of any answer.

In the first place, there are complaints against the existing system, which ought to be heard. A memorial from five hundred legal voters of Springfield, now on your table, bears testimony to them. Letters to myself and others, from persons whose opinions I am bound to regard, set them forth sometimes in very strong language. The administration of the arsenal at Springfield is commended by many; but there are others who judge it differently. As now conducted, it is sometimes represented to be the seat of oppressive conduct, and the occasion of heart-burning and strife, often running into local politics. In the eyes of some this arsenal is little better than a sore on that beautiful town. Now on these complaints and allegations I express no opinion.

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I do not affirm their truth or untruth. What I know of the superintendent makes it difficult for me to believe that anything unjust, oppressive, or hard can proceed from him. But the whole case justifies inquiry at least, and such will be secured by the proposition before the Senate. This is the smallest thing we can do.

This proposition is enforced by another consideration which seems to me entitled to weight. I have nothing to say now on the general question of reducing the army or modifying the existing military system. But I do affirm, confidently, that the genius of our institutions favors civil life rather than military life, — and that, in harmony with this, it is our duty, whenever the public interests will permit, to limit and restrict the sphere of military influence. This is not a military monarchy, where the soldier is supreme, but a republic, where the soldier yields to the civilian. But the law, as it now stands, gives to the soldier an absolute preference in a service which is not military, and which, from its nature, belongs to civil life. The manufacture of arms is a mechanical pursuit, and, for myself, I can see no reason why it should not be placed in charge of one bred to the business. Among the intelligent mechanics of Massachusetts there are many fully fit to be at the head of the arsenal at Springfield; but by the existing law all these are austerely excluded from any such trust. The idea which has fallen from so many Senators, that the superintendent of an armory ought to be a military man, that a military man only is competent, or even that a military man is more competent than a civilian, seems to me as illogical as the jocular fallacy of Dr. Johnson, that he "who drives fat oxen should himself be fat."

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NECESSITY OF UNION TO UPHOLD FREEDOM.

LETTER TO A RHODE ISLAND COMMITTEE, MARCH 26, 1853.

WASHINGTON, March 26, 1853.

DEAR SIR, — I cannot promise myself the pleasure of being in Rhode Island at the time you propose, and am therefore constrained to decline the invitation with which you have honored me.

But let me assure you, that, in all our political contests, I see no question comparable in practical importance, as surely there is none equal in moral grandeur, to that which is presented by the Free Democracy, and which now enlists your sympathies.

Both the old parties unite in upholding Slavery. It becomes all good citizens to unite in upholding Freedom; nor should any one believe that his single vote may not exert an influence on the struggle.

Believe me, dear Sir, faithfully yours,

CHARLES SUMNER.

GEORGE L. CLARKE, Chairman of the State Central Committee of the Free Democracy of Rhode Island.

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AGAINST SECRECY IN PROCEEDINGS OF THE SENATE.

SPEECH IN THE SENATE, ON THE PROPOSITION TO LIMIT THE SECRET SESSIONS OF THE SENATE, APRIL 6, 1853.

THE following resolution was submitted by Mr. Chase, of Ohio.

"*Resolved*, That all sessions and all proceedings of the Senate shall be public and open, except when matters communicated in confidence by the President shall be received and considered, and in such other cases as the Senate by resolution from time to time shall specially order; and so much of the thirty-eighth, thirty-ninth, and fortieth rules as may be inconsistent with this rule is hereby rescinded."

In the debate which ensued, Mr. Sumner spoke as follows.

MR. PRESIDENT, — Party allusions and party considerations have been brought to bear upon this question. I wish to regard it for a moment in the light of the Constitution, and in the spirit of our institutions. In the Constitution there is no injunction of secrecy on any of the proceedings of the Senate; nor is there any requirement of publicity. To the Senate is left the determination of its rules of proceeding. Thus abstaining from all regulation of this matter, the framers of the Constitution obviously regarded it as in all respects within the discretion of the Senate, to be exercised from time to time as it thinks best.

The Senate possesses three important functions: *first*, the legislative or parliamentary power, where it acts concurrently with the House of Representatives, as well

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as the President; *secondly*, the diplomatic power, or that of "advice and consent" to treaties with foreign countries in concurrence with the President; and, *thirdly*, the executive power, or that of "advice and consent" to nominations by the President for offices under the Constitution. I say nothing of another, rarely called into activity, the sole power to try impeachments.

At the first organization of the Government, the proceedings of the Senate, whether in legislation or on treaties or nominations, were with closed doors. In this respect legislative business and executive business were alike. This continued down to the second session of the Third Congress, in 1794, when, in pursuance of a formal resolution, the galleries were opened so long as the Senate were engaged in their legislative capacity, unless where, in the opinion of the Senate, secrecy was required; and this rule has continued ever since. Here was an exercise of discretion, in obvious harmony with public sentiment and the spirit of our institutions.

The change now proposed goes still further. It opens the doors on all occasions, whether legislative or executive, except when specially ordered otherwise. The Senator from South Carolina [Mr. BUTLER] says that the Senate is a confidential body, and should be ready to receive confidential communications from the President. But this will still be the case, if we adopt the resolution now submitted to us. The limitation proposed seems adequate to all exigencies, while the general rule will be publicity. Executive sessions with closed doors, shrouded from the public gaze and public criticism, constitute an exceptional part of our system, too much in harmony with the proceedings of other

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Governments less liberal in character. The genius of our institutions requires publicity. The ancient Roman, who bade his architect so to construct his house that his guests and all that he did could be seen by the world, is a fit model for the American people.

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THE GERMAN EMIGRANT MUST BE AGAINST SLAVERY.

LETTER TO LEWIS TAPPAN, ESQ., MAY 17, 1853.

BOSTON, May 17, 1853.

DEAR SIR, — I know Mr. Schmidt by the good name he has won, and I have also had the pleasure of making his personal acquaintance. I understand him to be a scholar, believing in the demand which Liberty in our country now makes upon every citizen. Thus endowed in mind and character, he will address his compatriots from Germany, in their own language, with persuasive power. I trust he will find the opportunity he covets; and I know of none which promises better than his present plan of a Weekly German Antislavery Newspaper at Washington.

The number of persons to be addressed by such a journal is very large; and they should be easy converts. The German emigrant who is not against Slavery here leads us to doubt the sincerity of his opposition to the Tyranny he has left behind in his native land.

Believe me, dear Sir, faithfully yours,

CHARLES SUMNER.

LEWIS TAPPAN, ESQ.

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POWERS OF THE STATE OVER THE MILITIA: EXEMPTIONS FOR CONSCIENTIOUS SCRUPLES.

SPEECH IN CONVENTION TO REVISE AND AMEND THE CONSTITUTION OF MASSACHUSETTS,[1] JUNE 21, 1853.

PROPOSITIONS of amendment on the general subject of the Militia being under consideration in Committee of the Whole, Mr. Sumner spoke as follows.

I SHOULD like to call the attention of the Committee to the precise question on which we are to vote. This does not, as it seems to me, properly open the discussion to which we have been listening. I do not understand that it involves the topics introduced by my friend opposite [Mr. WILSON], — the present condition of Europe, the prospects of the liberal cause in that quarter of the globe, or the extent to which that cause may be affected by a contemporaneous movement for peace. Nor do I understand that the important considerations introduced by the gentleman on my right [Mr. WHITNEY, of Boylston], regarding the extent to which Government may be intrusted with the power of the sword, can materially influence our decision. I put these things aside at this time.

[1] The members of this Convention were not required to have their domiciles in the places which they represented. Mr. Sumner sat as member for Marshfield, by which place he was chosen while absent from the State.

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The question is on the final passage of the fifteen resolutions reported by the Committee on the Militia. And here let me adopt a suggestion dropped by my friend opposite [Mr. WILSON]. He regretted, if I understood him, that this whole subject was not compressed into one or two resolutions. Am I right?

MR. WILSON. The gentleman is correct.

MR. SUMNER. I agree with him. I regret that it was not compressed into one or two resolutions. I object to these resolutions for several reasons. In the first place, there are too many; in the second place, at least two of them seem to be an assumption of power belonging to Congress, and therefore at least of doubtful constitutionality; and, in the third place, because twelve of them undertake to control matters which it were better to leave with the Legislature.

On the formation of the Constitution of Massachusetts, in 1780, it was natural that our fathers should introduce details with regard to the militia and its organization. The Constitution of the United States had not then been made. But since the establishment of this Constitution the whole condition of the militia is changed. Among the powers expressly given to Congress is the power "to provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, *reserving* to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress." And Congress has proceeded to exercise this power by the organization of a national militia. Whatever might have been the original inducement to multiform provisions on this subject in the Constitution of Massachu-

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setts, none such exists at this day, and it is impolitic at least to introduce them.

I fear that they are more than impolitic. I will not argue here the question of Constitutional Law; but I appeal to the better judgment of my professional brethren — and I am happy to see some of them lingering at this late hour — that any attempt on the part of the State to interfere, in any way, by addition or subtraction, with the organization of the national militia, is an experiment which we should not introduce into the permanent text of our organic law. If the decisions of the Supreme Court of the United States on the powers of Congress are to prevail, then, it seems to me, any such assumption, in a case where the original power of Congress is clear, will be unconstitutional and void. In the famous case of *Prigg* v. *Pennsylvania*, after an elaborate discussion at the bar, all State legislation on the subject of fugitive slaves was declared unconstitutional and void, while Congress is recognized as the sole depository of power on this subject. According to my recollection, it was expressly held that legislation by Congress excluded all State legislation on the same subject, whether to control, qualify, or *superadd to* the remedy enacted by Congress. I commend gentlemen, now so swift with these provisions, to the study of this precedent. It is comparatively recent; and the principle of interpretation which it establishes is applicable to State laws on the militia, even though entirely inapplicable to State laws on fugitive slaves, — for the simple reason, that in the former case the original power of Congress is clear, while in the latter it is denied.

But the States are not without power over the militia. In the very grant to Congress is a reservation to them

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as follows: "reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress." And here is precisely what the States can do. They may appoint the officers and train the militia.

Now, Sir, the first two resolutions before us transcend the powers of the State. They touch the enrolment and organization of the militia, and on this account are an assumption of power forbidden by the principle to which I have referred. The other thirteen resolutions, with the exception of the seventh, are in the nature of a military code, concerning the choice of officers, all of which should be left to the action of the Legislature.

In conformity with these views, Mr. Chairman, and in the hope of presenting a proposition on which the Convention may unite, I propose to strike out all after the preamble and insert two resolutions, as follows.

ART. 1. The Governor shall be the Commander-in-Chief of the Army and Navy of the State, and the Militia thereof, excepting when these forces shall be actually in the service of the United States, — and shall have power to call out the same to aid in the execution of the laws, to suppress insurrection, and to repel invasion.

ART. 2. The appointment of officers and the training of the Militia shall be regulated in such manner as may hereafter be deemed expedient by the Legislature; and all persons, who from scruples of conscience shall be averse to bearing arms, shall be excused on such conditions as shall hereafter be prescribed by law.

The first of these resolutions is identical with the seventh resolution of the Committee. The second provides for the exercise by the Legislature of powers ex-

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pressly reserved to the States over the appointment of officers and the training of the militia; and taking advantage of the Act of Congress which allows the States to determine who shall be exempted from military duty, it plants in the text of the Constitution a clause by which this immunity is secured to all persons who from scruples of conscience are averse to bearing arms. I believe we cannot go far beyond these without doing too much, while these seem to me enough.

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POWERS OF THE STATE OVER THE MILITIA: COLORED COMPANIES.

SPEECH IN CONVENTION TO REVISE AND AMEND THE CONSTITUTION OF MASSACHUSETTS, JUNE 22, 1853.

ON 22d June the following resolution was brought forward by Mr. Wilson: —

"*Resolved*, That no distinction shall ever be made, in the organization of the volunteer militia of this Commonwealth, on account of color or race."

On this proposition Mr. Sumner spoke as follows.

I HAVE a suggestion for my friend opposite [Mr. WILSON], in regard to the form of his proposition, which, if he accepts it, will, as it seems to me, absolutely remove his proposition from the criticism of my most eloquent friend before me [Mr. CHOATE], and from the criticism of other gentlemen who have addressed the Convention. I suggest to strike out the word "militia," and substitute the words "military companies," so that his proposition will read, "that in the organization of the volunteer military companies of the Commonwealth there shall be no distinction of color or race."

MR. WILSON. I accept the suggestion, and will amend my proposition accordingly.

MR. SUMNER. Now the proposition, as amended, I assert, is absolutely consistent with the Constitution of the United States, and, I believe, in conformity with the public sentiment of Massachusetts.

A brief inquiry will show that it is consistent with the Constitution of the United States, and in no respect

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interferes with the organization of the National Militia. That Constitution provides for organizing, arming, and disciplining the militia, and gives Congress full power over the subject, — in which particular, be it observed, it is clearly distinguishable from that of fugitive slaves, over whom no such power is given. To be more explicit, I will read the clause. It is found in the long list of enumerated powers of Congress, and is as follows: "The Congress shall have power to provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress." And then, at the close of the section, it is further declared, that Congress shall have power "to make *all laws which shall be necessary and proper* for carrying into execution the foregoing powers."

In pursuance of this power, Congress has proceeded, by various laws, "to provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States." The earliest of these laws, still in force, is entitled "An act more effectually to provide for the national defence, by *establishing an uniform* militia throughout the United States."[1] This was followed by several acts in addition. Congress, then, has undertaken to exercise the power of "organizing" the militia under the Constitution.

Here the question arises, to what extent, if any, this power, when already exercised by Congress, is exclusive

[1] Act of May 8, 1792, ch. 33.

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in character. Among the powers delegated to Congress there may be some not for the time being exercised. For instance, there is the power "to fix the standard of weights and measures." Practically, this has never been exercised by Congress; but it is left to each State within its own jurisdiction. On the other hand, there is a power, belonging to the same group, "to establish uniform laws on the subject of bankruptcies throughout the United States," which, when exercised by Congress, has been held so far exclusive as to avoid at once all the bankrupt and insolvent laws of the several States.

I might go over all the powers of Congress, and find constant illustration of the subject. For instance, there is the power "to establish an uniform rule of naturalization," on which Chief Justice Marshall once remarked, "That the power of naturalization is *exclusively* in Congress does not seem to be, and certainly ought not to be, controverted."[1] There is the power "to regulate commerce with foreign nations and among the several States," which was early declared by the Supreme Court to be exclusive, so as to prevent the exercise of any part of it by the States.[2] There is the power over patents and copyrights, which is also regarded as exclusive. So also is the power "to define and punish piracies and felonies committed on the high seas, and offences against the Law of Nations." So also is that other power, "to establish post-offices and post-roads." All these powers, as in the case of the power over the National Militia, have been exercised by Congress, and even if not absolutely exclusive in original character, have become so by exercise.

[1] Chirac *v.* Chirac, 2 Wheaton, 269.
[2] Gibbons *v.* Ogden, 9 Wheaton, 198.

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Now, Sir, upon what ground do gentlemen make any discrimination in the case of the power over the National Militia? I know of none which seems at all tenable. It is natural that the States should desire to exercise this power, since it was so important to them before the Union; but I do not see how any discrimination can be maintained at the present time. Whatever may have been the original importance of the militia to each State, yet, when the National Constitution was formed, and Congress exercised the power delegated to it over this subject, the militia of the several States was absorbed into one uniform body, organized, armed, and disciplined as the National Militia. To the States respectively, according to the express language of the Constitution, was left "the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress." To this may be added the implied power of "governing" them when in the service of the State. This is all. The distinct specification of certain powers, as reserved to the States, excludes the States from the exercise of all other powers not specified or clearly implied. In other words, they are excluded from all power over the "organizing, arming, and disciplining the militia," at least after Congress has undertaken to enact laws for this purpose.

The history of the adoption of the several parts of this clause in the National Convention reflects light upon its true meaning. The first part, in regard to organizing, arming, and disciplining the militia, was passed by a vote of nine States against two; the next, reserving the appointment of officers to the States, after an ineffectual attempt to amend it by confining the appointment to officers under the rank of general officers,

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was passed without a division; and the last, reserving to the States the authority to train the militia according to the discipline prescribed by Congress, was passed by a vote of seven States against four.[1] It seems, then, that there was strong opposition in the Convention, even to the secondary reservation of "the authority of training the militia." But this power is not reserved unqualifiedly. The States are to train the militia "according to the *discipline prescribed* by Congress": not according to any discipline determined by the States, or by the States concurrently with the National Government, but absolutely *according to the discipline prescribed by Congress,* — nor more, nor less: thus distinctly recognizing the essentially exclusive character of the legislation of Congress on this subject.

This interpretation derives confirmation from the manner in which the militia of England was constituted or organized at the time of the adoption of the National Constitution. To the crown was given "the *sole right* to govern and command them," though they were "officered" by the Lord Lieutenant, the Deputy Lieutenants, and other principal landholders of the county.[2] The Commentaries of Sir William Blackstone, from which this description is drawn, were familiar to the members of the Convention; and it is reasonable to suppose, that, in the distribution of powers between the National Government and the States, on this subject, the peculiar arrangement prevailing in the mother country was not disregarded.

If it should be said, that the adoption of this conclusion would affect the character of many laws enacted by States, and thus far recognized as ancillary to the

[1] Madison's Debates, August 23, 1787.

[2] Blackstone, Commentaries, I. 412, 413.

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National Militia, it may be replied, that the possibility of these consequences cannot justly influence our conclusions on a question which must be determined by acknowledged principles of Constitutional Law. In obedience to these same principles, the Supreme Court, in the case of *Prigg* v. *Pennsylvania*, after asserting a power over fugitive slaves which is controverted, has proceeded to annul a large number of statutes in different States. Mr. Justice Wayne in this case said, "that the legislation by Congress upon the provision, as the supreme law of the land, *excludes all State legislation upon the same subject*, — and that no State can pass any law or regulation, or interpose such as may have been a law or regulation when the Constitution of the United States was ratified, *to superadd to*, control, qualify, or impede a remedy enacted by Congress for the delivery of fugitive slaves to the parties to whom their service or labor is due."[1] Without the sanction of any express words in the Constitution, and chiefly, if not solely, impressed by the importance of consulting "unity of purpose or uniformity of operation"[2] in the legislation with regard to fugitive slaves, the Court assumed a power over this subject, and then, as a natural incident to this assumption, excluded the States from all sovereignty in the premises.

If this rule be applicable to the pretended power over fugitive slaves, it is still more applicable to the power over the militia which nobody questions. Besides, I know of no power which so absolutely requires what has been regarded as an important criterion, "unity of purpose or uniformity of operation." No uniform military organization can spring from opposite or inharmoni-

[1] Prigg v. Pennsylvania, 16 Peters, 636. [2] Ibid., 624.

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ous systems, and all systems proceeding from different sources are liable to be opposite or inharmonious.

Now, Sir, let us apply this reasoning to the matter in hand. In Massachusetts there exists, and has for a long time existed, an anomalous system, familiarly and loosely described as the Volunteer Militia, not composed absolutely of those enrolled under the laws of the United States, but a smaller, more select, and peculiar body. It cannot be doubted that the State, by virtue of its *police powers* within its own borders, has power to constitute or organize a body of *volunteers* to aid in enforcing its laws. But it does not follow that it has power to constitute or organize a body of volunteers who shall be regarded as part of the National Militia. And, Sir, I make bold to say that the volunteer militia — I prefer to call it the volunteer military companies — cannot be regarded as part of the National Militia. It is no part of that *uniform militia* which it was the object of the early Act of Congress to organize. It may appear to be part of this system, it may affect to be, but I pronounce it a mistake to suppose that it is so in any just constitutional sense.

As a local system, disconnected from the National Militia, and not in any way constrained by its organization, it is within our jurisdiction. We are free to declare the principles which shall govern it. We may declare, that, whatever may be the existing law of the United States with regard to its enrolled militia, — and with this I propose no interference, because it would be futile, — I say, Massachusetts may proudly declare that in her own volunteer military companies, marshalled under her own local laws, there shall be no distinction of race or color.

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THE PACIFIC RAILROAD AND THE DECLARATION OF INDEPENDENCE.

LETTER TO THE MAYOR OF BOSTON, FOR THE CELEBRATION OF JULY 4, 1853.

BOSTON, July 1, 1853.

DEAR SIR, — It will not be in my power to unite with the City Council of Boston in the approaching celebration of our national anniversary; but I beg to assure you that I am not insensible to the honor of their invitation.

The day itself comes full of quickening suggestions, which can need no prompting from me. And yet, with your permission, I would gladly endeavor to associate at this time one special aspiration with the general gladness. Allow me to propose the following toast.

The Railroad from the Atlantic to the Pacific. — Traversing a whole continent, and binding together two oceans, this mighty thoroughfare, when completed, will mark an epoch of human progress second only to that of our Declaration of Independence. May the day soon come!

Believe me, dear Sir, faithfully yours,

CHARLES SUMNER.

HON. BENJAMIN SEAVER, Mayor, &c.

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THE REPRESENTATIVE SYSTEM, AND ITS PROPER BASIS.

SPEECH ON THE PROPOSITION TO AMEND THE BASIS OF THE HOUSE OF REPRESENTATIVES OF MASSACHUSETTS, IN THE CONVENTION TO REVISE AND AMEND THE CONSTITUTION OF THAT STATE, JULY 7, 1853.

MR. PRESIDENT, — If the question under consideration were less important in its bearings, or less embarrassed by conflicting opinions, I should hesitate to break the silence which I have been inclined to preserve in this Convention. In taking the seat to which I was unexpectedly chosen while absent from the Commonwealth, in another sphere of duty, I felt that it would be becoming in me, and that my associates here would recognize the propriety of my course, considering the little opportunity I had enjoyed of late to make myself acquainted with the sentiments of the people on proposed changes, especially in comparison with friends to whom this movement is mainly due, — on these accounts, as also on other accounts, I felt that it would be becoming in me to interfere as little as possible with these debates. To others I willingly left the part which I might have taken.

And now, while I think, that, since our labors began, weeks, even months, have passed, and that the term is already reached, when, according to the just expectations and earnest desires of many, they should be closed,

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I feel that acts rather than words, that votes rather than speeches, — at least such as I might hope to make, — are needed here, to the end that the Convention, seasonably and effectively completing its beneficent work, may itself be hailed as a Great Act in the history of the Commonwealth.

But the magnitude of this question justifies debate; and allow me to add, that the State, our common mother, may feel proud of the ability, the eloquence, and the good temper with which it has thus far been conducted. Gentlemen have addressed the Convention in a manner which would grace any assembly that it has been my fortune to know, at home or abroad. Sir, the character of these proceedings gives new assurance for the future. The alarmist, who starts at every suggestion of change, and the croaker, who augurs constant evil from the irresistible tendency of events, must confess that there are men here to whose intelligence and patriotism, under God, the interests of our beloved Commonwealth may well be intrusted. Yes, Sir, Massachusetts is safe. Whatever the result even of the present important question, whichsoever scheme of representation may be adopted, Massachusetts will continue to prosper as in times past.

In the course of human history, two States, small in territory, have won enviable renown by genius and devotion to Freedom, so that their very names awaken echoes: I refer to Athens and Scotland. But Athens, — even at Salamis, repelling the Persian host, or afterwards, in the golden days of Pericles, — and Scotland, throughout her long struggle with England, down to the very Act of Union at the beginning of the last century, — were each inferior, in population and wealth, to Mas-

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sachusetts at this moment. It belongs to us, according to our capacities, to see that this comparison does not end here. Others may believe that our duty is best accomplished by standing still. I like to believe that it can be completely done only by constant, incessant advance in all things, — in knowledge, in science, in art, and lastly in government itself, destined to be the bright consummation, on earth, of all knowledge, all science, and all art.

In framing our Constitution anew, we encounter a difficulty which at its original formation, in 1780, perplexed our fathers, — which perplexed the Convention of 1820, — which with its perplexities has haunted successive Legislatures and the whole people down to this day, — and which now perplexes us. This difficulty occurs in determining the Representative System, and proceeds mainly from the corporate claims of towns. From an early period in the State, towns, both great and small, with slight exceptions, have sent one or more representatives to the Legislature. In primitive days, when towns were few and the whole population was scanty, this arrangement was convenient at least, if not equitable. But now, with the increased number of towns, and the unequal distribution of a large population, it has become inconvenient, if not inequitable. The existing system does not work well, and we are summoned to reform it.

And here, Sir, let me congratulate the Convention, that, on this most important question, transcending every other, all of us, without distinction of party, are in favor of reform. All are Reformers. The existing system finds no advocate on this floor. Nobody here

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will do it reverence. If the call of the Convention were not already amply vindicated, if there were doubt anywhere of its expediency, the remarkable concurrence of all sides in condemning the existing representative system shows that we have not come together without cause.

The orders of the day have been filled with various plans to meet the exigency. Most of these aimed to preserve the corporate representation of towns; some of them, at least one from the venerable gentleman from Taunton [Mr. MORTON], and another from the venerable gentleman from Boston [Mr. HALE], favored an opposite system, hitherto untried among us, and proposed to divide the State into districts. The question has been between these hostile propositions; and that is the question which I propose to consider, in the light of history and abstract principle, as also with reference to present exigencies. I shall speak, *first*, of the origin and nature of the Representative System, and its proper character under American institutions; and, *secondly*, I shall endeavor to indicate the principles which may conduct us to a practical conclusion in the present debate. Entering upon this service at so late a stage of the discussion, I feel like a tardy gleaner in a well-traversed field; but I shall proceed.

I.

I BEGIN with the Origin and Nature of the Representative System. This is an invention of modern times. In antiquity there were republics and democracies, but there was no Representative System. Rulers were chosen by the people, as in many Commonwealths;

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senators were designated by the king or by the censors, as in Rome; ambassadors or legates were sent to a Federal Council, as to the Assembly of the Amphictyons; but in no ancient state was any body of men ever constituted by the people to represent them in the administration of their internal affairs. In Athens, the people met in public assembly, and directly acted for themselves on all questions, foreign or domestic. This was possible there, as the State was small, and the Assembly seldom exceeded five thousand citizens, — a large town-meeting, or mass-meeting, we might call it, — not inaptly termed "that fierce democratie" of Athens.

But where the territory was extensive, and the population scattered and numerous, there could be no assembly of the whole body of citizens. To meet this precise difficulty the Representative System was devised. By a machinery so obvious that we are astonished it was not employed in the ancient Commonwealths, the people, though scattered and numerous, are gathered, by their chosen representatives, into a small and deliberative assembly, where, without tumult or rashness, they consider and determine all questions which concern them. In every representative body, properly constituted, the people are practically present.

Nothing is invented and perfected at the same time; and this system is no exception to the rule. In England, where it reached its earliest vigor, it has been, and still is, anomalous in character. The existing divisions of the country, composed of boroughs, cities, and counties, were summoned by the king's writ to send representatives, with little regard to equality of any kind, whether of population, taxation, or territory. Their existence as corporate units was the prevailing title. The

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irregular operation of the system, increasing with lapse of time, provoked a cry for Parliamentary Reform, which, after a struggle of more than fifty years, ending in a debate that occupied the House of Commons more than fifty days, was finally carried; but, though many abuses and inequalities were removed, yet the anomalous representation by counties, cities, and boroughs still continued. And this, Sir, is the English system.

Pass now to the American system. I say American system, — for to our country belongs the honor of first giving to the world the idea of a system which, discarding corporate representation, founded itself absolutely on equality. Let us acknowledge with gratitude that from England have come five great and ever memorable institutions, by which Liberty is secured: I mean the Trial by Jury, — the writ of *Habeas Corpus*, — the Representative System, — the Rules and Orders of Debate, — and, lastly, that benign principle which pronounces *that its air is too pure for a slave to breathe:* perhaps the five most important political establishments of modern times. This glory cannot be taken from the mother country. But America has added to the Representative System another principle, without which it is incomplete, and which, in the course of events, is destined, I cannot doubt, to find acceptance wherever the Representative System is employed: I mean *the principle of equality.*

Here in Massachusetts, home of the ideas out of which sprang the Revolution, this principle had its earliest expression. And it is not a little curious that this very expression was suggested by the two evils of which we now complain, — namely, a practical inequality of representation, and a too numerous House.

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In the earliest days of the Colony, while the number of freemen was small and gathered in one neighborhood, there was no occasion for any representative body. All could then meet in public assembly, as at ancient Athens; in fact, they did so meet, and in this way discharged the duties of legislation. But as the freemen became scattered and numerous, it was found grievous to compel the personal attendance of the whole body, and, as a substitute, the towns were empowered, in 1634, to assemble in General Court by deputies.[1] Here was the establishment of the Representative System in Massachusetts, which has continued, without interruption, down to our day. The size of the House and the relative representation of towns have varied at different times; but the great principle of representation, by which a substitute is provided for the whole body of the people, has constantly been preserved. Still a feeling has long prevailed that the system had not yet received its final form, while, with more or less precision, has been discerned that principle of equality which is essential to its completeness.

Among the acts of the first General Court of the Revolution was one passed in the summer of 1775, after the Battle of Bunker Hill, "declaratory of the right of the towns and districts to elect and depute a representative or representatives to serve for and represent them in the General Court." By this act all provisions of previous acts denying to certain towns and districts the right of sending a representative were declared null and void, and every town containing thirty qualified voters

[1] Hutchinson, History of Massachusetts, Vol. I. pp 30, 39. Charters and General Laws of the Colony and Province of Massachusetts Bay, Appendix, p. 713. Records of the Governor and Company of the Massachusetts Bay, Vol. I. pp. 116 118.

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was authorized to send one.[1] The immediate consequence was the two evils to which I have already referred, — namely, inequality of representation, and a too numerous House: but the whole number of representatives which aroused the complaints of that day was three hundred and five.

These grievances were the occasion of a Convention of delegates from the towns of Essex County, at Ipswich, April 25, 1776, where was adopted a Memorial, afterwards presented and enforced at the bar of the House by John Lowell. In this remarkable document occurs the first development, if not the first proclamation, of the principle of equality in representation. Here, Sir, is the fountain and origin of an idea full of strength, beauty, and truth. Listen to the words of these Revolutionary fathers.

"If this representation is equal, it is perfect; as far as it deviates from this equality, so far it is imperfect, and approaches to that state of slavery; and the want of a just weight in representation is an evil nearly akin to being totally destitute of it. An inequality of representation has been justly esteemed the cause which has in a great degree sapped the foundation of the once admired, but now tottering, fabric of the British Empire; and we fear, that, if a different mode of representation from the present is not adopted in this Colony, our Constitution will not continue to that late period of time which the glowing heart of every true American now anticipates. . . . .

"We cannot realize that your Honors, our wise political fathers, have adverted to the present inequality of representation in this Colony, to the growth of the evil, or to the fatal consequences which will probably ensue from the continuance of it.

[1] Charters and General Laws of Massachusetts Bay, Appendix, pp. 796, 797.

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"Each town and district in the Colony is by some late regulations permitted to send one representative to the General Court, if such town or district consists of thirty freeholders and other inhabitants qualified to elect; if of one hundred and twenty, to send two. No town is permitted to send more than two, except the town of Boston, which may send four. There are some towns and districts in the Colony in which there are between thirty and forty freeholders, and other inhabitants qualified to elect, only; there are others besides Boston in which there are more than five hundred. The first of these may send one representative; the latter can send only two. If these towns as to property are to each other in the same respective proportion, is it not clear to a mathematical demonstration that the same number of inhabitants of equal property in the one town have but an *eighth* part of the weight in representation with the other? — and with what colorable pretext? we would decently inquire."[1]

Under the pressure of this powerful state paper the obnoxious law was repealed, and one "providing for a *more equal* representation" substituted; but the evil was only partially remedied. Then followed an unsuccessful effort to make a Constitution in 1777–8, which failed partly through dissatisfaction with its disposal of this very question. The County of Essex was again heard in another document, now known as the "Essex Result," and among the most able and instructive in our history, from which I take the following important words.

"The rights of representation should be so equally and impartially distributed, that the representatives should have the same views and interests with the people at large. They

[1] From the original MS. in the Massachusetts Archives, Vol. 156.

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should think, feel, and act like them, and, in fine, should be an exact miniature of their constituents. They should be, if we may use the expression, the whole body politic, with all its property, rights, and privileges reduced to a smaller scale, *every part being diminished in just proportion.* To pursue the metaphor, if, in adjusting the representation of freemen, *any ten are reduced into one, all the other tens should be alike reduced; or, if any hundred should be reduced to one, all the other hundreds should have just the same reduction.*" [1]

Mark well these words. Here is the Rule of Three, for the first time in history, applied to representation. This, Sir, is not the English system. I call it, with pride, the American system.

In another place the document proceeds as follows.

"The rights of representation should also be held sacred and inviolable, and for this purpose representation should be fixed upon known and easy principles; and the Constitution should make provision that recourse should constantly be had to those principles within a very small period of years, to rectify the errors that will creep in through lapse of time or alteration of situations." [2]

Then, distinctly, it proposes a system of districts, in words which I quote.

"In forming the first body of legislators, let regard be had only to the representation of persons, not of property. This body we call the House of Representatives. Ascertain the number of representatives. It ought not to be so large as will

[1] Result of the Convention of Delegates holden at Ipswich, in the County of Essex, who were deputed to take into Consideration the Constitution and Form of Government proposed by the Convention of the State of Massachusetts Bay, (Newburyport, 1778,) pp. 29, 30. See also Memoir of Theophilus Parsons, by his Son, Appendix, pp. 359 - 402, where this remarkable paper will be found.

[2] Result, p. 33.

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induce an enormous expense to Government, nor too unwieldy to deliberate with coolness and attention, nor so small as to be unacquainted with the situation and circumstances of the State. One hundred will be large enough, and perhaps it may be too large. We are persuaded that any number of men exceeding that cannot do business with such expedition and propriety as a smaller number could. However, let that at present be considered as the number. Let us have the number of freemen in the several counties in the State, and let these representatives be apportioned among the respective counties in proportion to their number of freemen. . . . . As we have the number of freemen in the county, and the number of county representatives, by dividing the greater by the less we have the number of freemen entitled to send one representative. Then add as many adjoining towns together as contain that number of freemen, or as near as may be, and *let those towns form one district*, and proceed in this manner through the county."[1]

MR. HALLETT, for Wilbraham (interrupting). Will the gentleman state who was the author of that Essex paper?

MR. SUMNER. Theophilus Parsons is the reputed author of the document known as the "Essex Result."

MR. HALLETT. Yes, Sir, it was Theophilus Parsons who was the author of that, and John Lowell of the other; and good old Tory doctrines they are.

MR. SUMNER. If these be Tory doctrines, I must think well of Toryism.

Sir, notwithstanding these appeals, sustained with unsurpassed ability, the American system failed to be adopted in the Constitution of 1780. The anomalous English system was still continued; but, as if to cover the departure from principle, it was twice declared that

[1] Result, pp. 49 - 51.

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the representation of the people should be "founded upon the principle of equality." This declaration still continues as our guide, while the irregular operation of the existing system, with its inequalities and large numbers, is a beacon of warning.

Following closely upon these efforts in Massachusetts, this principle found an illustrious advocate in Thomas Jefferson. In his "Notes on Virginia," written in 1781, he sharply exposes the inequalities of representation;[1] and a short time afterwards, when the victory at Yorktown had rescued Virginia from invasion and secured the independence of the United Colonies, he prepared the draught of a Constitution for his native State, which, disowning the English system, and recognizing the very principle that had failed in Massachusetts, expressly provided that "the number of delegates which each county may send shall be *in proportion to the number of its qualified electors;* and the whole number of delegates for the State shall be so *proportioned to the whole number of qualified electors in it,* that they shall never exceed three hundred nor be fewer than one hundred. . . . . If any county be reduced in its qualified electors below the number authorized to send one delegate, let it be annexed to some adjoining county."[2] This proposition, which is substantially the Rule of Three, did not find favor in Virginia, which State, like Massachusetts, was not yet prepared for such a charter of electoral equality; but it still stands as a monument at once of its author and of the true system of representation.

The American system, though first showing itself in

[1] Query XIII.

[2] Notes on Virginia, Appendix, No. II.: Works, Vol. VIII., p 443.

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Massachusetts and Virginia, found its earliest practical exemplification a few years later in the Constitution of the United States. By the Articles of Confederation each State was entitled to send to Congress not less than two nor more than seven representatives, and in the determination of questions each State had one vote only. This plan was rejected by the framers of the new Constitution, and another was adopted, till then untried in the history of the world. It was declared that "representatives and direct taxes shall be *apportioned* among the several States which may be included within this Union *according to their respective numbers*": not according to property, not according to territory, not according to any corporate rights, *but according to their respective numbers.* And this system has continued down to our day, and will continue immortal as the Union itself. Here is the Rule of Three actually incorporated into the Representative System of the United States.

An attempt has been made to render this system odious, or at least questionable, by charging upon it something of the excesses of the great French Revolution. Even if this rule had prevailed at that time in France, it would be bold to charge upon it any such consequences. But it is a mistake to suppose that it was then adopted in that country. The republican Constitution of 1791 was not founded upon numbers only, but upon numbers, territory, and taxation combined, — a mixed system, which excluded the true idea of personal equality. At the peaceful, almost bloodless, Revolution of 1848, under the lead of Lamartine, a National Assembly was convened on the simple basis of population, and one representative was allowed for every

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forty thousand inhabitants. Here, indeed, is the Rule of Three; but the idea originally came from our country.

MR. HALLETT. Will the gentleman for Marshfield allow me to make one more inquiry?

MR. SUMNER. Certainly.

MR. HALLETT. Do I understand the gentleman to say that the Rule of Three was applied to representation in the United States?

MR. SUMNER. I mean to say that the representation in the lower House of Congress was apportioned according to numbers; and this is the Rule of Three.

A practical question arises here, whether this rule should be applied to the whole body of population, including women, children, and unnaturalized foreigners, or to those only who exercise the electoral franchise, — in other words, to voters. It is probable that the rule would produce nearly similar results in both cases, as voters, except in few places, would bear a uniform proportion to the whole population. But it is easy to determine what the principle of the Representative System requires. Since its object is to provide a practical substitute for meetings of the people, it should be founded, in just proportion, on the numbers of those who, according to our Constitution, can take part in those meetings, — that is, upon the qualified voters. The representative body should be a miniature or abridgment of the electoral body, — in other words, of those allowed to participate in public affairs. If this conclusion needs authority, it may be found in the words of Mr. Madison, in the Debates on the National Constitution. "It has been very properly observed," he says, "that representation is an expedient by which the meeting of the people themselves is rendered unnecessary, *and that*

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the representatives ought, therefore, to bear a proportion to the votes which their constituents, if convened, would respectively have." [1]

The Rule of Three, then, applied to voters, seems to me sound; but whether applied to voters or population, it is the true rule of representation, and stands on irreversible principles. In my view, it commends itself to the natural reason so obviously, so instinctively, that I do not feel disposed to dwell upon it. But since it is called in question, I shall be excused for saying a few words in its behalf. Its advantages present themselves in several aspects.

First. I put in the front its constant and equal operation throughout the Commonwealth. Under it, every man will have a representative each year, and every man will have the same representative power as every other man. In this respect it recognizes a darling idea of our institutions, which cannot be disowned without weakening their foundations. It gives to the great principle of human equality a new expansion and application. It makes all men, in the enjoyment of the electoral franchise, whatever their diversities of intelligence, education, or wealth, or wheresoever they may be within the borders of the Commonwealth, whether in small town or in populous city, absolutely equal at the ballot-box.

I know that there are persons, Sir, who do not hesitate to assail the whole doctrine of the equality of men, as enunciated in our Declaration of Independence and in our Bill of Rights. In this work two eminent statesmen of our own country and England have led the way.[2] But it seems to me, that, if they had chosen to

[1] Madison's Debates, July 14, 1787, Vol. II. p. 1102.

[2] See *ante*, Vol. II. p 331

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comprehend the meaning of the principle, much, if not all, of their objection would have been removed. Very plain it is that men are not born equal in physical strength or in mental capacity, in beauty of form or health of body. This is apparent to all, and the difference increases with years. Diversity or inequality in these respects is the law of creation. But as God is no respecter of persons, and as all are equal in his sight, whether rich or poor, whether dwellers in cities or in fields, so are all equal in natural rights; and it is an absurd declamation — of which no gentleman in this Convention is guilty — to adduce, in argument against them, the physical or mental inequalities by which men are characterized. Now I am not prepared to class the electoral franchise among inherent, natural rights, common to the whole human family, without distinction of age, sex, or residence; but I do say, that from the equality of men, which we so proudly proclaim, we derive a just rule for its exercise. For myself, I accept this principle, and, just so far and just so soon as possible, I would be guided by it in the system of Representation. But there are other reasons still.

Secondly. The Rule of Three, as applied to representation, is commended by its simplicity. It supersedes all the painful calculations to which we have been driven, the long agony of mathematics, as it was called by my friend over the way [Mr. GILES], and is as easy in application as it is just.

Thirdly. This rule is founded in Nature, and not in Art, — on natural bodies, and not on artificial bodies, — on men, and not on corporations, — on souls, and not on petty geographical lines. On this account it may be called a natural rule, and, when once established, will

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become fixed and permanent, beyond all change or desire of change.

And, *fourthly*, this rule removes, to every possible extent, those opportunities of political partiality and calculation, in the adjustment of representation, which are naturally incident to any departure from precise rule. It was beautifully said of Law by the greatest intellect of Antiquity, that it is *mind without passion*; and this very definition I would extend to a rule which, with little intervention from human will, is graduated by numbers, passionless as law itself in the conception of Aristotle. The object of free institutions is to withdraw all concerns of State, so far as practicable, from human discretion, and place them under the shield of human principles, to the end, according to the words of our Constitution, that there may be "a government of laws, and not of men." But, just in proportion as we depart from precise rule, it becomes a government of men, and not of laws.

Such considerations as these, thus briefly expressed, seem to vindicate this rule of representation. But I would not forget the arguments adduced against it. These assume two distinct forms: one founded on the character of our towns and the importance of preserving their influence; the other founded on the alleged necessity of counteracting the centralization of power in the cities. Now of these in their order.

And, first, of the importance of preserving our towns. Sir, I yield to no man in appreciation of the good done by these free municipalities. The able member for Erving [Mr. GRISWOLD], who began this debate, the eloquent member for Berlin [Mr. BOUTWELL], and my excellent friend of many years, the accomplished mem-

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ber for Manchester [Mr. DANA], in the masterly speeches which they have addressed to the Convention, attributed no good influence to the towns which I do not recognize also. With them I agree, cordially, that the towns of Massachusetts, like the municipalities of Switzerland, have been schools and nurseries of freedom, — and that in these small bodies men were early disciplined in those primal duties of citizenship, which, on a grander scale, are made the foundation of our whole political fabric. But I cannot go so far as to attribute this remarkable influence to the assumed fact, that each town by itself was entitled to a representative in the legislative body. At the time of the Revolution this was the prerogative of most towns, though not of all; but it cannot be regarded as the distinctive, essential, life-giving attribute: at most, it was only an incident.

Sir, the true glory of the towns then was, that they were organized on the principle of self-government, at a time when that principle was not generally recognized, — that each town by itself was a little republic, where the whole body of freemen were voters, with powers of local legislation, taxation, and administration, and, especially, with power to choose their own head and all subordinate magistrates. The boroughs of England have possessed the power to send a member — often two members — to Parliament; but this has not saved them from corruption; nor has any person attributed to them, though in the enjoyment of this franchise, the influence which has proceeded from our municipalities. The reason is obvious. They were organized under charters from the crown, by which local government was vested, not in the whole body of freemen, but in small councils, or select classes, originally nominated

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by the crown, and ever afterwards renewing themselves. No such abuse prevailed in our municipalities; and this political health at home, Sir, and not the incident of exclusive representation in a distant Legislature, has been the secret of their strength. I would cherish it ever.

This brings me, in the next place, to the objection founded on centralization of power in the cities. It is said that wealth, business, population, and talent, in multitudinous forms, all tend to the cities, and that the excessive influence of this concentrated mass, quickened by an active press, by facilities of concert, and by social appliances, ought to be counterbalanced by allotment to the towns of representative weight beyond their proportion of numbers. Now, Sir, while confessing and regretting the present predominance of the cities, I must be permitted to question the propriety of the proposed remedy. And here, differing in some respects from friends on both sides, I make an appeal for candid judgment of what I shall candidly say.

Let us deal fairly by the cities. No student of history can fail to perceive that they have performed different parts at different stages of the world. In Antiquity, they were the acknowledged centres of power, often of tyranny. In the Middle Ages, they became the home of freedom, and the bridle to feudalism. For this service they should be gratefully remembered. And now there is another change. The armed feudalism is overthrown; but it is impossible not to see that it has yielded to a commercial feudalism, whose seat is in the cities, and which, in its way, is hardly less selfish and exacting than the feudalism of the iron hand. My friend, the member for Manchester [Mr. DANA], was

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clearly right, when he said that the Boston of to-day is not the Boston of our fathers. Let me be understood. I make no impeachment of individuals, but simply indicate those combined influences proceeding from the potent Spirit of Trade, which, though unlike that Spirit of the Lord where is Liberty, is not inconsistent with the most enlarged munificence. I think, while confessing the abounding charities of the rich men whose eulogy we have heard more than once in this debate, it must be admitted that those pure principles which are the breath of the Republic now find their truest atmosphere in calm retreats, away from the strife of gain and the hot pavements of crowded streets. Sir, it is not only when we look upon the fields, hills, and valleys, clad in verdure, and shining with silver lake or rivulet, that we are ready to exclaim, —

"God made the country, and man made the town."

But, Sir, while maintaining these opinions, I cannot admit the argument, that the centralized power of the cities may be counteracted by degrading them in the scale of representation. This cannot be purposely done, without departing from fundamental principles, and overthrowing the presiding doctrine of personal equality. Cities are but congregations of men; and men exert influence in various ways, — by the accident of position, the accident of intelligence, the accident of property, the accident of birth, and, lastly, by the vote. It is the vote only which is not an accident; and it should be the boast of Massachusetts, that all men, whatever their accidents, are equal in their votes.

Here the hammer of the President fell, as the hour expired; but, by unanimous consent, Mr. Sumner proceeded.

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The idea of property as a check upon numbers, which on a former occasion found such favor in this hall, is now rejected in the adjustment of our Representative System. And, Sir, I venture to predict that the proposition, newly broached in this Commonwealth, to restrain the cities by curtailment of their just representative power, will hereafter be as little regarded.

II.

MR. PRESIDENT, — Such is what I have to say on the history and principles of the Representative System, particularly in the light of American institutions; and this brings me to the *practical question* at this moment. I cannot doubt that the District System, as it is generally called, whereby the representative power will be distributed in just proportion, according to the Rule of Three, among the voters of the Commonwealth, is the true system, destined at no distant day to prevail. And gladly would I see this Convention hasten the day by presenting it to the people for adoption in the organic law. To this end I have striven by my votes. But, Sir, I cannot forget what has passed. The votes already taken show that the Convention is not prepared for this radical change; and I am assured by gentlemen more familiar with public sentiment than I can pretend to be, that the people are not yet prepared for it.

Thus we are brought to the position occupied successively by the Conventions of 1780 and 1820, each of which, though containing warm partisans of the District System, shrank from its adoption — as in Virginia, the early recommendation of Jefferson, and his vehement

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support at a later day, have been powerless to produce this important amendment. John Lowell, who appeared at the bar of the Massachusetts Legislature in 1776 to vindicate the principle of equality in representation, and Theophilus Parsons, author of the powerful tract which proposed to found the Representative System on the Rule of Three, were both members of the first Convention, — and I know not if the District System has since had any abler defenders. To these I might add the great name of John Adams, who early pleaded for equality of representation, and declared, in words adopted by the Essex Convention, that the Representative Assembly should be "an exact portrait in miniature of the people at large."[1] In the Convention of 1820, the District System was cherished and openly extolled by a distinguished jurist, at that time a Justice of the Supreme Court of the United States, — Joseph Story, — whose present fame gives additional importance to his opinions. And yet the desire of these men failed. The corporate representation of towns was preserved, and the District System pronounced impracticable. In the Address put forth by the Convention of 1780, and signed by its President, James Bowdoin, these words may be found: —

"You will observe that we have resolved that representation ought to be founded on the principle of Equality; but it cannot be understood thereby that each town in the Commonwealth shall have weight and importance in a just proportion to its numbers and property. An exact representation would be unpracticable, even in a system of government arising from the state of Nature, and much more

[1] Thoughts on Government: Works, Vol. IV. pp. 195, 205. Essex Result, p. 29.

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so in a State already divided into nearly three hundred corporations." [1]

The Convention seem to have recognized the theoretic fitness of an "exact representation," but did not regard it as feasible in a State already divided into nearly three hundred corporations. In the Convention of 1820, Joseph Story, who has been quoted by my eloquent friend [Mr. CHOATE], used language which, though not so strong as that of the early Address, has the same result.

"In the Select Committee, I was in favor of a plan of representation in the House founded on population, as the most just and equal in its operation. I still retain that opinion. There were serious objections against this system, and it was believed by others that the towns could not be brought to consent to yield up the corporate privileges of representation, which had been enjoyed so long, and were so intimately connected with their pride and their interests. I felt constrained, therefore, with great reluctance, to yield up a favorite plan. I have lived long enough to know, that, in any question of government, something is to be yielded up on all sides. Conciliation and compromise lie at the origin of every free government; and the question never was and never can be, what is absolutely best, but what is relatively wise, just, and expedient. I have not hesitated, therefore, to support the plan of the Select Committee, as one that, on the whole, was the best that, under existing circumstances, could be obtained." [2]

Sir, I am not insensible to these considerations, or to the authority of these examples. A division of the

[1] Journal of the Convention, p. 219.

[2] Debates, etc., in the Convention to revise the Constitution of Massachusetts, 1820–21, p. 186 c. Story's Miscellaneous Writings, p. 518.

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State into districts would be a change, in conformity with abstract principles, which would interfere with existing opinions, habitudes, and prejudices of the towns, all of which must be respected. A change so important in character cannot be advantageously made, unless supported by the permanent feelings and convictions of the people. Institutions are formed *from within*, not *from without*. They spring from custom and popular faith, silently operating with internal power, not from the imposed will of a lawgiver. And our present duty here, at least on this question, may be in some measure satisfied, if we aid this growth.

Two great schools of jurisprudence for a while divided the learned mind of Germany, — one known as the Historic, the other as the Didactic. The question between them was similar to that now before the Convention. The first regarded all laws and institutions as the growth of custom, under constant influences of history; the other insisted upon positive legislation, giving to them a form in conformity with abstract reason. It is clear that both were in a measure right. No lawgiver or statesman can disregard either history or abstract reason. He must contemplate both. He will faithfully study the Past, and will recognize its treasures and traditions; but, with equal fidelity, he will set his face towards the Future, where all institutions will at last be in harmony with truth.

I have been encouraged to believe in the practicability of the District System by its conformity with reason, and by seeing how naturally it went into operation under the Constitution of the United States. But there is a difference between that case and the present. A new Government was then founded, with new powers,

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applicable to a broad expanse of country; but the Constitution of Massachusetts was little more than a continuation of preëxisting usages and institutions, with all dependence upon royalty removed. This distinction may help us now. If the country were absolutely new, without embarrassment from existing corporate rights, — *claims* I would rather call them, — it might easily be arranged according to the most approved theory, as Philadelphia is said to have been originally laid out on the model of the German city which its great founder had seen in his travels.[1] But to bring our existing system into symmetry, and to lay it out anew, would seem to be a task — at least I am reluctantly led to this conclusion by what I have heard here — not unlike that of rebuilding Boston, and of shaping its compact mass of crooked streets into the regular rectangular forms of the city of Penn. And yet this is not impossible. With each day, by demolishing ancient houses and widening ancient ways, changes are made which tend to this result.

Sir, we must recognize the existing condition of things, remedy all practical grievances so far as possible, and set our faces towards the true system. We must act in the Present, but be mindful also of the Future. There are proper occasions for compromise, as most certainly there are rights beyond compromise. But the Representative System is an expedient or device for ascertaining the popular will, and, though well satisfied that this can be best founded on numbers, I would not venture to say, in the present light of political science, that the right of each man to an equal representation, according to the Rule of Three, and without regard to existing in-

[1] Julius, Nordamerikas Sittliche Zustände, Band I. p. 92.

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stitutions or controlling usages, is of that inherent and lofty character — like the God-given right to life or liberty — which admits of no compromise.

Several grievances exist, which will be removed by the proposed amendments. There is one which I had hoped would disappear, but which is the necessary incident of corporate representation: I mean the unwieldy size of the House.

It is generally said that a small body is more open to bribery and corruption than a large body; but, on the other hand, I have heard it asserted that the larger is more exposed than the smaller. I put this consideration aside. My objection to a large House is, that it is inconvenient for the despatch of public business. There is a famous saying of Cardinal de Retz, that every assembly of more than one hundred is a mob; and Lord Chesterfield applied the same term to the British House of Commons. At the present time that body has nominally six hundred and fifty-four members. It is called by Lord Brougham "preposterously large"; but a quorum for business is forty only; and it is only on rare occasions of political importance that its benches are completely occupied. The House of Lords, nominally, has four hundred and fifty-nine members; but a quorum in this body consists of three only;[1] and much of its business is transacted in a very thin attendance.

The experience of Congress, as also of other States, points to a reduction of our present number. Indeed, for many years this was a general desire through the State. In the earliest Colonial days every town was

[1] According to the old rule, *Tres faciunt collegium.*

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allowed three deputies; but in five years the number, on reaching thirty-three, was reduced to two for each.[1] At a later day, in 1694, a great contest in the House was decided by a vote of twenty-six against twenty-four.[2] In the agitating period between 1762 and 1773, covering the controversies which heralded the Revolution, the House consisted, on an average, of one hundred and twenty members; and only on one occasion the magnitude of the interest is reported by Hutchinson to have drawn together so many as one hundred and thirteen. At the last session of the Provincial Legislature, in May, 1774, when the Revolutionary conflict was at hand, the complete returns of the Journal show one hundred and forty. In 1776 there was a House of three hundred and five; but this "enormous and very unwieldy size," according to the language of the time, was assigned as a reason for a new Constitution. I regret that we cannot profit by this experience. A House of two hundred and fifty, or, since we are accustomed to large congregations,[3] of three hundred at most, would be an improvement on the present system.

There are two proposed improvements which I hail with satisfaction: one relates to the small towns, and the other to the cities. The small towns will have a more constant representation; and this of itself is an

[1] Records of the Governor and Company of the Massachusetts Bay, Vol. I. pp. 118, 250, 254.

[2] Hutchinson, History of Massachusetts, Vol. II. p. 77.

[3] The House for many years numbered upwards of five hundred members, — in 1835, '36, and '37 swelling to the truly "enormous and unwieldy size" of 615, 619, and 635; and even under the greatly reduced apportionment established by the Amendment of 1840, the numbers in the two years (1851 and 1852) preceding the present Convention were no less than 396 and 402. See Gifford and Stowe's Manual for the General Court, (Boston, 1860,) p. 180.

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approach to the true principle of representation, which should be constant as well as equal. The cities will be divided into districts, and this I regard of twofold importance: first, as the beginning of a true system; and, secondly, as reducing the power which the cities, by the large number of their representatives, chosen by general ticket, now exercise.

A respected gentleman, now in my eye, has reminded me that in boyhood his attention was arrested in this House by what was called "the Boston seat," reserved exclusively for the Boston members, who sat together on cushions, while other members were left to such accommodation as they could find on bare benches. This discrimination ceased long ago. But it seems to me that this reserved and cushioned seat is typical of another discrimination, which Boston, in common with the cities, still enjoys. Sir, in voting for forty-four representatives, the elector in Boston exercises a representative power far exceeding that of electors in the country; and the majority which rules Boston and determines the whole delegation exercises a representative power transcending far that of any similar number in the Commonwealth. This is apparent on the bare statement, as forty-four sticks are stronger in one compact bundle than when single or in small parcels. Thus, while other counties are divided, the delegation from Boston is united. In all political contests, it is like the well-knit Macedonian phalanx, or the iron front of the Roman legion, in comparison with the disconnected individual warriors against whom they were engaged. This abuse will be removed; and here is the beginning, I had almost said the inauguration, of a true electoral equality in our Commonwealth.

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And now, in conclusion, while thanking gentlemen for the kind attention with which they have honored me, let me express briefly the result to which I have come. I have openly declared my convictions with regard to the District System, and in accordance with these have recorded my votes in this Convention. These votes, which reveal my inmost desires on this matter, I would not change. But the question is not now between the District System, which I covet so much for Massachusetts, and the proposed amendments, but between these amendments and the existing system. On this issue I decide without hesitation. I shall vote, Sir, for the propositions of amendment before the Convention, should they come to a question on their final passage, not because they are all that I desire, not because they satisfy the requirement of principles which I cannot deny, not because they constitute a permanent adjustment of this difficult question, but because they are the best which I can now obtain, because they reform grievances of the existing system, and because they begin a change which can end only in the establishment of a Representative System founded in reality, as in name, on *Equality*. Their adoption will be the triumph of conciliation and harmony, and will furnish new testimony to the well-tempered spirit of our institutions, where

> "jarring interests, reconciled, create
> The according music of a well-mixed State."

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BILLS OF RIGHTS: THEIR HISTORY AND POLICY.

SPEECH ON THE REPORT FROM THE COMMITTEE ON THE BILL OF RIGHTS, IN THE CONVENTION TO REVISE AND AMEND THE CONSTITUTION OF MASSACHUSETTS, JULY 25, 1853.

As Chairman of the Committee on the Bill of Rights, Mr. Sumner submitted a Report, on which, in Committee of the Whole, he spoke as follows.

MR. CHAIRMAN, — As Chairman of the Committee on the Preamble and Bill of Rights, it is my duty to introduce and explain their Report. It will be perceived that it is brief, and proposes no important changes. But in justice to the distinguished gentlemen with whom I have the honor of being associated on that Committee, I deem it my duty to suggest that the extent of their labors must not be judged by this result. It appears from the proceedings of the Convention of 1820, that the Committee on the Bill of Rights at that time sat longer than any other Committee. I believe that the same Committee in the present Convention might claim the same preëminence. Their records show twenty different sessions.

At these sessions, the Preamble and the Bill of Rights, in its thirty different propositions, were passed in review and considered clause by clause; the various orders of the Convention, amounting to twelve in num-

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ber, the petitions addressed to the Convention and referred to the Committee, as also informal propositions from members of the Convention and others were considered, some of them repeatedly and at length. On many questions there was a decided difference of opinion, and on a few the Committee was nearly equally divided. But after the best consideration we could bestow in our protracted series of meetings, it was found that the few simple propositions now on your table were all upon which a majority of the Committee could be brought to unite. As such I was directed to present them. Admonished by the lapse of time and the desire to close these proceedings, I might be content with this simple statement.

But, notwithstanding the urgency of our business, I cannot allow the opportunity to pass — indeed, I should not do my duty — without attempting for a brief moment to show the origin and character of this part of our Constitution. In this way we may learn its weight and authority, and appreciate the difficulty and delicacy of any change in its substance or even its form. I will try not to abuse your patience.

The Preamble and Bill of Rights, like the rest of our Constitution, were from the pen of John Adams, — among whose published works the whole document, in its original draught, may be found. At the time when he rendered this important service to his native Commonwealth and to the principles of free institutions everywhere, he was forty-four years of age. He was also quite prepared. The natural maturity of his powers had been enriched by the well-ripened fruit of assiduous study and of active life, both of which concurred in

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him. The examples of Greece and Rome and the writings of Sidney and Locke were especially familiar to his mind. The Common Law he had made his own, and mastered well its whole arsenal of Freedom. For a long time the vigorous and unfailing partisan of the liberal cause in Boston, throughout its many conflicts, — then in Congress, whither he was transferred, the irresistible champion of Independence, — and then the republican representative of the United, but still struggling, Colonies at the Court of France, — in the brief interval between two foreign missions, only seven days after landing from his long ocean voyage, he was chosen a delegate to the Constitutional Convention, and at once brought all his varied experience, rare political culture, and eminent powers to the task of adjusting the framework of government for Massachusetts. As his work, it all claims our regard; and no part bears the imprint of his mind so much as the Preamble and Bill of Rights; nor is any other part authenticated as coming so exclusively from him.

At the time of its first adoption the Massachusetts Bill of Rights was more ample in provisions and more complete in form than any similar declaration in English or Colonial history. Glancing at its predecessors, we learn something of its sources. First came, long back in the thirteenth century, Magna Charta, with generous safeguards of Freedom, wrung from King John by the Barons at Runnymede. From time to time these liberties were confirmed, and, after an interval of centuries, they were again ratified, near the beginning of the unhappy reign of Charles the First, by a Parliamentary Declaration, to which the monarch assented, known as the Petition of Right, which, in its very title, reveals the

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humility with which the rights of the people were then maintained. Finally, in a different tone and language, at the Revolution of 1688, when James the Second was driven from his dominions, a "Declaration of the true, ancient, and indubitable rights and liberties of the people of the kingdom," familiarly known as the Bill of Rights, was delivered by the Convention Parliament to the new sovereigns, William and Mary, and embodied in the Act of Settlement, by virtue of which they sat on the throne. These, Sir, are English examples.

Their influence was not confined to England. It crossed the ocean. From the beginning the Colonists were tenacious of the rights and liberties of Englishmen, and at various times and in various forms declared them. Connecticut, as early as 1639, Virginia in 1624 and 1776, Pennsylvania in 1682, New York in 1691, — and I might mention others still, — put forth Declarations, brief and meagre, but kindred to those of the mother country. In the Colony of New Plymouth, the essential principles of Magna Charta were proclaimed in 1636, under the name of "The General Fundamentals"; and in 1641 the inhabitants of Massachusetts Bay announced, in words worthy of careful study, that "the free fruition of such Liberties, Immunities, and Privileges, as Humanity, Civility, and Christianity call for, as due to every man in his place and proportion, without impeachment and infringement, hath ever been and ever will be the tranquillity and stability of Churches and Commonwealths, and the denial or deprival thereof the disturbance, if not the ruin, of both."[1]

[1] Preamble to the Body of Liberties of the Massachusetts Colony, 1641: Coll. Mass. Hist. Soc., 3d Ser. Vol. VIII. p. 216. See also General Laws and Liberties of the Massachusetts Colony, revised and reprinted by Order of the General Court, 1672, p. 1.

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Such was the Preamble to the "Body of Liberties" of the Massachusetts Colony in 1641. It would be difficult to find any text more comprehensive than these remarkable words, — the object being "Liberties, Immunities, and Privileges," to such extent "as Humanity, Civility, and Christianity call for"; and this Declaration, broader than Magna Charta, became the inspiration of Massachusetts, if not of the Nation. Nor does Massachusetts stand alone in this honor. Connecticut is by her side.[1]

I should not do justice to this "Body of Liberties," if I did not call attention to at least four different declarations. There is, first, the clause: "There shall never be any bond slavery, villenage, or captivity amongst us, unless it be lawful captives taken in just wars, and such strangers as willingly sell themselves or are sold to us"; and although this provision falls short of that universal freedom which is our present aspiration. it is a plain limitation upon Slavery, and marks the hostility of the Colony. Another declaration sets an example of hospitality: "If any people of other nations, professing the true Christian religion, shall flee to us from the tyranny or oppression of their persecutors, or from famine, wars, or the like necessary and compulsory cause, they shall be entertained and succored amongst us according to that power and prudence God shall give us." And it is further declared: "Every person within this jurisdiction, whether inhabitant or foreigner, shall enjoy the same Justice and Law that is general for the Plan-

[1] The Preamble in combination with the first Article of the Massachusetts Body of Liberties was adopted as the Preamble to the Connecticut Code of 1650. See Public Records of the Colony of Connecticut, edited by J. H. Trumbull, (Hartford, 1850,) p. 509; and compare with Coll. Mass. Hist. Soc., *ut supra*.

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tation, which we constitute and execute one towards another, without partiality or delay." Here is nothing less than Equality before the Law, without this compendious term. There is another declaration, which has the same exalted character: "Every man, whether inhabitant or foreigner, free or not free, shall have liberty to come to any public Court, Council, or Town Meeting, and either by speech or writing to move any lawful, seasonable, and material question, or to present any necessary motion, complaint, petition, bill, or information, whereof that meeting hath proper cognizance, so it be done in convenient time, due order, and respective manner." Such declarations as these belong to the history of Freedom.

In the animated discussions immediately preceding the Revolution, the rights and liberties of Englishmen were constantly asserted as the birthright of the Colonists. This was often by formal resolution or declaration, couched at first in moderate phrase. At the outrage of the Stamp Act, a Congress of delegates from nine Colonies, held at New York in October, 1765, put forth a series of resolutions embodying "*Declarations of our humble opinion* respecting the most essential rights and liberties of the Colonists."[1] The humility of this language recalls the English Petition of Right under Charles the First. This was followed in 1774 by the Declaration of the Continental Congress, which, in another tone and with admirable force, in ten different propositions, arrays the rights which belong to "the inhabitants of the English Colonies in North America, by the immutable Laws of Nature, the Principles of the

[1] Proceedings of the Congress at New York, p. 5. Hutchinson's History of Massachusetts, Vol. III., Appendix, p. 479.

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English Constitution, and the several Charters or Compacts." [1]

"Time's noblest offspring is the last";

and the whole Colonial series is aptly closed by the Declaration of Independence, announcing not merely the rights of Englishmen, but the rights of men.

Only a few brief weeks before the Declaration of Independence, Virginia, taking the lead of her sister Colonies, established a Constitution, to which was prefixed an elaborate Declaration of Rights. This remarkable document, which became the immediate precedent for the whole country, marks an epoch in political history. Massachusetts and Connecticut had already led the way in that early and most comprehensive Preamble, which has been too little noticed; but in all English Declarations of Rights, and generally even in those of the Colonies, stress was laid upon the liberties and privileges of Englishmen. The rights claimed even by the Continental Congress of 1774, in their masculine Declaration, were the rights of "free and natural-born subjects within the realm of England." But the Virginia Bill of Rights, standing at the front of its first Constitution, discarded all narrow title from mere English precedent, planted itself on the eternal law of God, above every human ordinance, and openly proclaimed that "all men are by nature equally free and independent," — a declaration which is repeated, though in other language, by the Massachusetts Declaration of Rights.

The policy of Bills of Rights is sometimes called in question. It has been said that they were originally

[1] Journals of Congress, October 14, 1774, Vol. I. p. 28.

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privileges or concessions extorted from the king, and, though expedient in a monarchy, are of little value in a republic. As late as 1821, in the Convention for revising the Constitution of New York, doubts of their utility were openly expressed by Mr. Van Buren. But they are now above question. State after State, ending with California, follows the example of Virginia and Massachusetts, and places its Bill of Rights in the front of its Constitution. Nor can I doubt that much good is done by this frank assertion of fundamental principles. The public mind is instructed, people learn to know their rights, liberal institutions are confirmed, and the Constitution is made stable in the hearts of the community. Bills of Rights are lessons of political wisdom and anchors of liberty. They are the constant index, and also scourge, of injustice and wrong. In Massachusetts, Slavery itself disappeared before the declaration that "all men are born free and equal," interpreted by a liberty-loving Court.[1]

In the Convention of 1780 the Bill of Rights formed a prominent subject of interest. The necessity of such a safeguard had been pressed upon the people, and its absence from the Constitution of 1778 was unquestionably a reason for the rejection of that ill-fated effort. Indeed, the Constitution was openly opposed because it had no Bill of Rights. In the array of objections at the period was the following, which I take from an important contemporaneous publication: "That a Bill of Rights, clearly ascertaining and defining the rights of

[1] See, on this subject, a paper entitled "The Extinction of Slavery in Massachusetts," by Emory Washburn: Coll. Mass. Hist. Soc., 4th Ser. Vol. IV. pp. 333 – 346.

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conscience and that security of person and property which every member in the State hath a right to expect from the supreme power thereof, ought to be settled and established previous to the ratification of any Constitution for the State."[1] Accordingly, at the earliest moment after the organization of the Convention, a motion was made, "that there be a Declaration of Rights prepared previous to the framing a new Constitution of Government," which after adoption gave way to another, "that the Convention *will prepare* a Declaration of Rights," and this motion prevailed by a nearly unanimous vote, — the whole number present, as returned by the monitors, being two hundred and fifty-one, of whom two hundred and fifty voted in the affirmative.[2] Thus emphatically did the early fathers of Massachusetts manifest their watchfulness for the rights of the people; and there is good reason to believe, also, that among the motives which stimulated it was a determination in this way to abolish Slavery.[3] The Convention then resolved to "proceed to the framing a new Constitution of Government." A grand Committee of thirty was chosen to perform these two important duties; and this Committee, after extended discussion, intrusted to John Adams alone the preparation of a Declaration of Rights, and to a Sub-Committee, consisting of James Bowdoin, Samuel Adams, and John Adams, the duty of preparing the Form of a Constitution, which Sub-Committee again delegated the task to John Adams: so that

[1] Essex Result, p. 4.

[2] Journal of the Convention, pp. 22, 23.

[3] This was the testimony of the late Rev. Charles Lowell, who had received it from his father, Hon. John Lowell, a member of the Convention, in whose family was a tradition that the latter obtained the insertion of the words "all men are born free and equal," for this declared purpose. See, *ut supra*, Coll. Mass. Hist. Soc., 4th Ser. Vol. IV. p. 340.

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to the pen of this illustrious citizen we are indebted primarily both for the Declaration of Rights and the Form of the Constitution.[1]

It is not difficult to trace most, if not all, of the ideas and provisions of our Preamble and Declaration of Rights to their primitive sources. The Preamble, where the body politic is founded on the fiction of the Social Compact, was doubtless inspired by the writings of Sidney and Locke, and by the English discussions at the period of the Revolution of 1688, when this questionable theory did good service in response to the assumptions of Filmer, and as a shield against arbitrary power. Of different provisions in the Bill of Rights, some are in the very words of Magna Charta, — others are derived from the ancient Common Law, the Petition of Right, and the Bill of Rights of 1688, — while, of the thirty Articles composing it, no less than nineteen,[2] either wholly or in part, may be found substantially in the Virginia Bill of Rights: but these again are in great part derived from the earlier fountains.

And now, Sir, you have before you for revision and amendment this early work of our fathers. I do not stop to consider its peculiar merits. With satisfaction I might point to special safeguards by which our rights have been protected against usurpation, whether executive, legislative, or judicial. With pride I might dwell on those words which banished Slavery from our soil,

[1] Observations on the Reconstruction of Government in Massachusetts during the Revolution: Works of John Adams, Vol. IV. pp. 215, 216.

[2] Namely, Articles 1, 2, 4-10, 12-18, 20, 26, 30. The Virginia Bill of Rights consists of sixteen Articles, three of which (the 5th, 6th, and 8th) are divided in the Massachusetts Declaration, constituting respectively the substance of Articles 30 and 8, 9 and 10, 12 and 13.

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and rendered the Declaration of Independence here with us a living letter. But the hour does not require or admit any such service. You have a practical duty, which I seek to promote; and I now take leave of the whole subject, with the simple remark, that a document proceeding from such a pen, drawn from such sources, with such an origin in all respects, speaking so early for Human Rights, and now for more than threescore years and ten a household word to the people of Massachusetts, should be touched by the Convention only with exceeding care.

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FINGER-POINT FROM PLYMOUTH ROCK.

SPEECH AT THE PLYMOUTH FESTIVAL IN COMMEMORATION OF THE EMBARKATION OF THE PILGRIMS, AUGUST 1, 1853.

THE President, Richard Warren, Esq., said they had already been delighted with the words of a distinguished member of the Senate of the United States [Mr. EVERETT.] They were favored with the presence of another; and he would give as a sentiment: —

The Senate of the United States, — The concentrated light of the stars of the Union.

In his reply, Mr. Sumner attempted to obtain a hearing for the Antislavery cause and the Party of Freedom. In picturing the English Puritans he had in mind our Antislavery Puritans, who, like their prototypes, were at first "Separatists," and then "Independents." The abuse showered on each was the same. Though nothing is said directly on present affairs, they were clearly discerned behind the Puritan veil. Such was the sensibility in certain quarters, that it was objected to as out of place. Others were pleased with its fidelity. Among the latter was the poet John G. Whittier, who wrote at the time: "Its tone and bearing are unmistakable, and yet unobjectionable. . . . . When I read the toast which called thee up, I confess I could see very little appropriateness in it; in fact, it seemed to me a very unpromising text, and I almost feared to read the sermon. I enjoyed it all the better for my misgivings."

MR. PRESIDENT, — You bid me speak for the Senate of the United States. But I know well that there is another voice here, of classical eloquence, which might more fitly render this service. As one of the humblest members of that body, and associated with the public councils for a brief period only,

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I should prefer that my distinguished colleague [Mr. EVERETT], whose fame is linked with a long political life, should speak for it. And there is yet another here [Mr. HALE], who, though not at this moment a member of the Senate, has, throughout an active and brilliant career, marked by a rare combination of ability, eloquence, and good-humor, so identified himself with the Senate in the public mind that he might well speak for it always, and when he speaks, all are pleased to listen. But, Sir, you have ordered it otherwise.

From the tears and trials at Delft Haven, from the deck of the Mayflower, from the landing on Plymouth Rock, to the Senate of the United States is a mighty contrast, covering whole spaces of history, hardly less than from the wolf that suckled Romulus and Remus to that Roman Senate which on curule chairs swayed Italy and the world. From these obscure beginnings of poverty and weakness, which you now piously commemorate, and on which all our minds naturally rest to-day, you bid us leap to that marble Capitol, where thirty-one powerful republics, bound in common fellowship and welfare, are gathered together in legislative body, constituting One Government, which, stretching from ocean to ocean, and counting millions of people beneath its majestic rule, surpasses far in wealth and might any government of the Old World when the little band of Pilgrims left it, and now promises to be a clasp between Europe and Asia, bringing the most distant places near together, so that there shall be no more Orient or Occident. It were interesting to dwell on the stages of this grand procession; but it is enough, on this occasion, merely to glance at them and pass on.

Sir, it is the Pilgrims that we commemorate to-day,

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not the Senate. For this moment, at least, let us tread under foot all pride of empire, all exultation in our manifold triumphs of industry, science, literature, with all the crowding anticipations of the vast untold Future, that we may reverently bow before the Forefathers. The day is theirs. In the contemplation of their virtue we derive a lesson which, like truth, may judge us sternly, but, if we can really follow it, like truth, shall make us free. For myself, I accept the admonition of the day. It may teach us all, though few in numbers or alone, never, by word or act, to swerve from those primal principles of duty, which, from the landing on Plymouth Rock, have been the life of Massachusetts. Let me briefly unfold the lesson, — though to the discerning soul it unfolds itself.

Few persons in history have suffered more from contemporary misrepresentation, abuse, and persecution, than the English Puritans. At first a small body, they were regarded with indifference and contempt. But by degrees they grew in numbers, and drew into their company education, intelligence, and even rank. Reformers in all ages have had little of blessing from the world they sought to serve. But the Puritans were not disheartened. Still they persevered. The obnoxious laws of conformity they vowed to withstand, till, in the fervid language of the time, "they be sent back to the darkness from whence they came." Through them the spirit of modern Freedom made itself potently felt, in great warfare with Authority, in Church, in Literature, and in State, — in other words, for religious, intellectual, and political emancipation. The Puritans primarily aimed at religious freedom: for this they contended in Parliament, under Elizabeth and James; for this

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they suffered: but, so connected are all these great and glorious interests, that the struggles for one have always helped the others. Such service did they do, that Hume, whose cold nature sympathized little with their burning souls, is obliged to confess that "the precious spark of Liberty had been kindled and was preserved by the Puritans alone," and he adds, that "to this sect the English owe the whole freedom of their Constitution."

As among all reformers, so among them were differences of degree. Some continued within the pale of the National Church, and there pressed their ineffectual attempts in behalf of the good cause. Some at length, driven by conscientious convictions, and unwilling to be partakers longer in its enormities, stung also by cruel excesses of magisterial power, openly disclaimed the National Establishment, and became a separate sect, first under the name of Brownists, from the person who led in this new organization, and then under the better name of Separatists. I like this word, Sir. It has a meaning.[1] After long struggles in Parliament and out of it, in Church and State, prolonged through successive reigns, the Puritans finally triumphed, and the despised sect of Separatists, swollen in numbers, and now under the denomination of Independents,[2] with Oliver Cromwell at their head and John Milton as his Secretary, ruled England. Thus is prefigured the final triumph of all, however few in numbers, who sincerely devote themselves to Truth.

The Pilgrims of Plymouth were among the earliest of the Separatists. As such, they knew by bitter experi-

[1] Our Abolitionists and Free-Soilers were Separatists.

[2] Like the Republican party. — whose triumph is here foreshadowed.

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ence all the sharpness of persecution. Against them the men in power raged like the heathen. Against them the whole fury of the law was directed. Some were imprisoned, all were impoverished, while their name became a by-word of reproach. For safety and freedom the little band first sought shelter in Holland, where they continued in obscurity and indigence for more than ten years, when they were inspired to seek a home in this unknown Western world. Such, in brief, is their history. I could not say more of it without intruding upon your time; I could not say less without injustice to them.

Rarely have austere principles been expressed with more gentleness than from their lips. By a covenant with the Lord, they had vowed to walk in all his ways, according to their best endeavors, *whatsoever it should cost them*, — and also to receive whatsoever truth should be made known from the written word of God. Repentance and prayers, patience and tears, were their weapons. "It is not with us," said they, "as with other men, whom small things can discourage or small discontentments cause to wish themselves at home again." And then again, on another occasion, their souls were lifted to utterance like this: "When we are in our graves, it will be all one, whether we have lived in plenty or penury, whether we have died in a bed of down or on locks of straw." Self-sacrifice is never in vain, and with the clearness of prophecy they foresaw that out of their trials should come a transcendent Future. "As one small candle," said an early Pilgrim Governor, "may light a thousand, so the light kindled here may in some sort shine even to the whole nation." And these utterances were crowned by the testimony of

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the English governor and historian, whose sympathy for them was as little as that of Hume for the Puritans, confessing it doubtful "whether Britain would have had any colonies in America at this day, if religion had not been the grand inducement," — thus honoring our Pilgrims.

And yet these men, with such sublime endurance, lofty faith, and admirable achievement, are among those sometimes called "Puritan knaves" and "knaves-Puritans," and openly branded by King James as "very pests in the Church and Commowealth." The small company of our forefathers became jest and gibe of fashion and power. The phrase "men of one idea" was not invented then; but, in equivalent language, they were styled "the pinched fanatics of Leyden." A contemporary poet and favorite of Charles the First, Thomas Carew, lent his genius to their defamation. A masque, from his elegant and careful pen, was performed by the monarch and his courtiers, turning the whole plantation of New England to royal sport. The jeer broke forth in the exclamation, that it had "purged more virulent humors from the politic body than guaiacum and all the West Indian drugs have from the natural bodies of this kingdom."[1]

And these outcasts, despised in their own day by the proud and great, are the men whom we have met in this goodly number to celebrate, — not for any victory of war, — not for any triumph of discovery, science, learning, or eloquence, — not for worldly success of any kind. How poor are all these things by the side of that divine virtue which, amidst the reproach, the obloquy, and the hardness of the world, made them hold fast to Free-

[1] This masque, entitled *Coelum Britannicum*, was performed at Whitehall, February 18, 1633.

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dom and Truth! Sir, if the honors of this day are not a mockery, if they do not expend themselves in mere self-gratulation, if they are a sincere homage to the character of the Pilgrims, — and I cannot suppose otherwise, — then is it well for us to be here. Standing on Plymouth Rock, at their great anniversary, we cannot fail to be elevated by their example. We see clearly what it has done for the world, and what it has done for their fame. No pusillanimous soul here to-day will declare their self-sacrifice, their deviation from received opinions, their unquenchable thirst for liberty, an error or illusion. From gushing multitudinous hearts we now thank these lowly men that they dared to be true and brave. Conformity or compromise might, perhaps, have purchased for them a profitable peace, but not peace of mind; it might have secured place and power, but not repose; it might have opened present shelter, but not a home in history and in men's hearts till time shall be no more. All must confess the true grandeur of their example, while, in vindication of a cherished principle, they stood alone, against the madness of men, against the law of the land, against their king. Better the despised Pilgrim, a fugitive for freedom, than the halting politician, forgetful of principle, "with a Senate at his heels."

Such, Sir, is the voice from Plymouth Rock, as it salutes my ears. Others may not hear it; but to me it comes in tones which I cannot mistake. I catch its words of noble cheer: —

"New occasions teach new duties; Time makes ancient good uncouth;
They must upward still and onward who would keep abreast of Truth:
Lo, before us gleam her camp-fires! we ourselves must Pilgrims be,
Launch our Mayflower, and steer boldly through the desperate winter sea."

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IRELAND AND IRISHMEN.

LETTER TO A COMMITTEE OF IRISH-BORN CITIZENS, AUGUST 2, 1853.

BOSTON, August 2, 1853.

GENTLEMEN, — It is not in my power to be with you on the evening of the celebration at Faneuil Hall, but, I pray you, do not consider me insensible to the honor of your invitation.

Permit me to say that no country excites a generous sympathy more than Ireland; nor is any society more genial and winning than that of Irishmen.

Believe me, Gentlemen, faithfully yours,

CHARLES SUMNER.

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THE LANDMARK OF FREEDOM:

NO REPEAL OF THE MISSOURI COMPROMISE.

SPEECH IN THE SENATE, AGAINST THE REPEAL OF THE MISSOURI PROHIBITION OF SLAVERY NORTH OF 36° 30′ IN THE NEBRASKA AND KANSAS BILL, FEBRUARY 21, 1854.

Cursed be he that removeth his neighbor's landmark. *And all the people shall say, Amen.* — DEUTERONOMY, XXVII. 17.

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"THE Nebraska Debate," as it was called at the time, was one of the most remarkable in our history. It grew out of the proposition to overturn the famous Missouri Compromise, so as to admit Slavery into the vast territory west of the Mississippi, where it had been prohibited by that Compromise. The country was startled by the outrage. Many who had tried to reconcile themselves to the Fugitive Slave Bill, as required by the Constitution, were maddened by this most audacious attempt. Even assuming that the Fugitive Slave Bill was in any sense justifiable, there was nothing to justify this flagrant violation of plighted faith, where Slavery was the inexorable robber. Here began those heats which afterwards showed themselves in blood. Never was the action of Congress watched with more anxiety. Speeches were read as never before, especially those opposed to this new aggression. That of Mr. Sumner was extensively circulated in various editions, and he received numerous letters expressing sympathy and gratitude. The tone of these illustrates the reception of the speech. The late Rufus W. Griswold, so well known in contemporary literature, wrote from New York on the day after its delivery: "The admirable speech which you delivered in the Senate yesterday will bring you a wearying quantity of approving letters; but, though aware of this, I cannot refrain from assuring you of my own admiration of it and gratitude for it, nor from telling you that all through the city it appears to be the subject of applauding conversation. . . . . I congratulate you on having made a speech so worthy of an American Senator, and calculated to be so serviceable to the cause of Liberty." Frederick Douglass, who watched the contest from a distance with the interest of a former slave, wrote: "All the friends of Freedom in every State and of every color may claim you just now as their representative. As one of your sable constituents, I desire to thank you for your noble speech for Freedom and for your country, which I have now read twice over." An original Abolitionist wrote: "Let me thank you from my heart of hearts for your noble speech. It is everything that we could wish, — bold, free, and true. God will surely bless you!" The feeling of the hour appeared also in the following from John G. Whittier: "I am unused to flatter any one, least of all one whom I love and honor; but I must say, in all sincerity, that there is no orator or statesman living in this country

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or in Europe whose fame is so great as not to derive additional lustre from such a speech. It will live the full life of American history." Professor C. S. Henry, of the New York University, wrote: "I thank you for your noble speech on the Nebraska Bill. In every quality of nobleness transcendently noble. Unsurpassed in tone and temper, — unrivalled in impregnable soundness and judicious statement of positions, in clearness and logical force of historical recital, in conclusiveness of reasoning, in beautiful fitness of style, and in the true eloquence of a justice-loving soul." Among the curiosities of praise, considering the political position of the writer, was a letter from Pierre Soulé, our minister at Madrid, and formerly Senator from Louisiana, containing the following passage: "Que je profite de cette occasion pour vous dire combien j'ai été heureux du succès, et pour mieux dire, du triomphe éclatant que vous avez obtenu à l'occasion de votre discours sur le *Nebraska Bill*. Courage! *Sic itur ad astra*. Mais que dis-je? Vous y êtes déjà, et habile qui réussirait vous en déloger." These are examples only; but they help to exhibit the condition of the public mind. The North was aroused, and felt as never before towards those who spoke in its behalf.

The origin of the debate will appear from a statement of facts.

On the 14th of December, 1853, Mr. Dodge, of Iowa, asked and obtained leave to introduce a bill to organize the Territory of Nebraska, which was read a first and second time by unanimous consent and referred to the Committee on Territories. This was a simple Territorial Bill, in the common form, containing no allusion to Slavery, and not in any way undertaking to touch the existing Prohibition of Slavery in this Territory.

On the 4th of January, 1854, Mr. Douglas, of Illinois, as Chairman of the Committee on Territories, reported this bill back to the Senate with various amendments, accompanied by a special report. By this bill only a single Territory was constituted, under the name of Nebraska; the existing Prohibition of Slavery was not directly overthrown, but it was declared that the States formed out of this Territory should be admitted into the Union "with or without Slavery," as they should desire.

On the 16th of January, Mr. Dixon, of Kentucky, in order to accomplish directly what the bill did only indirectly, gave notice of an amendment, to the effect that the existing Prohibition of Slavery "shall not be so construed as to apply to the Territory contemplated by this Act, or to any other Territory of the United States; but that the citizens of the several States or Territories shall be at liberty to

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take and hold their slaves within any of the Territories of the United States, or of the States to be formed therefrom."

On the next day, January 17, Mr. Sumner, in order to preserve the existing Prohibition, gave notice of the following amendment.

"*Provided*, That nothing herein contained shall be construed to abrogate or in any way contravene the Act of March 6, 1820, entitled 'An Act to authorize the people of Missouri Territory to form a Constitution and State Government, and for the admission of such State into the Union on an equal footing with the original States, and to prohibit Slavery in certain Territories'; wherein it is expressly enacted, 'that in that territory ceded by France to the United States, under the name of Louisiana, which lies north of thirty-six degrees and thirty minutes north latitude, not included within the limits of the State contemplated by this Act, slavery and involuntary servitude, otherwise than in the punishment of crimes, whereof the parties shall have been duly convicted, shall be, and is hereby, forever prohibited.'"

It is worthy of remark, that at this stage the proposition of Mr. Dixon, and also that of Mr. Sumner, were equally condemned by the *Washington Union*, the official organ of the Administration. It had not then been determined to sustain the repeal.

On the 23d of January, Mr. Douglas, from the Committee on Territories, submitted a new bill, as a substitute for that already reported. Here was a sudden change, by which the Territory was divided into two, Nebraska and Kansas, and the Prohibition of Slavery was directly overthrown. According to his language at the time, there were "incorporated into it one or two other amendments, which make the provisions of the bill upon other and more delicate questions more clear and specific, so as to avoid all conflict of opinion." It was formally enunciated in the bill, that the Prohibition of Slavery "was superseded by the principles of the legislation of 1850, commonly called the Compromise Measures, and is hereby declared inoperative." This of course superseded the proposed amendment of Mr. Dixon, who subsequently declared his entire assent to the bill in its new form. It also presented the issue directly raised in Mr. Sumner's proposed amendment.

On the next day, January 24th, when the amended bill had just been laid upon the tables of Senators, and without allowing the necessary time even for its perusal, Mr. Douglas pressed its consideration upon the Senate. After some debate it was postponed until the 30th of January, and made the special order from day to day until disposed of.

Meanwhile an appeal to the country was put forth by a few Senators and Representatives in Congress, calling themselves Independent Democrats. The only Senators who signed this appeal were Mr. Chase and

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Mr. Sumner. It was entitled, "Shall Slavery be permitted in Nebraska?" and proceeded in strong language to expose the violation of plighted faith and the wickedness about to be perpetrated. This document was extensively circulated, and did much to awaken the public.

On the 30th of January the Senate proceeded to the consideration of the bill, when Mr. Douglas took the floor and devoted himself to denunciation of the appeal by the Independent Democrats, characterizing its authors as "Abolition confederates," and particularly arraigning Mr. Chase and Mr. Sumner, the two Senators who had signed it. When he sat down, Mr. Chase replied at once to the personal matters introduced, and was followed by Mr. Sumner, in the few remarks below; and this was the opening of the great debate which occupied for months the attention of the country.

MR. PRESIDENT, — Before the Senate adjourns I crave a single moment. As a signer of the address referred to by the Senator from Illinois [Mr. DOUGLAS], I openly accept, before the Senate and the country, my full responsibility for it, and deprecate no criticism from any quarter. That document was put forth in the discharge of a high public duty, — on the precipitate introduction into this body of a measure which, as seems to me, is not only subversive of an ancient landmark, but hostile to the peace, the harmony, and the best interests of the country. But, Sir, in doing this, I judged the act, and not its author. I saw only the enormous proposition, and nothing of the Senator.

The language used is strong, but not stronger than the exigency required. Here is a measure which reverses the time-honored policy of our fathers in the restriction of Slavery, — which sets aside the Missouri Compromise, a solemn compact, by which all the territory ceded by France under the name of Louisiana, north of thirty-six degrees and thirty minutes north latitude and not included within the limits of Missouri, was "forever" consecrated to Freedom, — and which

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violates, also, the alleged compromises of 1850: and all this opening an immense territory to Slavery. Such a measure cannot be regarded without emotions too strong for speech; nor can it be justly described in common language. It is a soulless, eyeless monster, — horrid, unshapely, vast: and this monster is now let loose upon the country.

Allow me one other word of explanation. It is true I desired that the consideration of this measure should not be pressed at once, with indecent haste, as was proposed, even before the Senate could read the bill in which it is embodied. You may remember that the Missouri Bill, as appears from the Journals of Congress, when first introduced, in December, 1819, was allowed to rest upon the table nearly two months before the discussion commenced. The proposition to undo the only part of that work which is now in any degree within the reach of Congress should be approached with even greater caution and reserve. The people have a right to be heard on this monstrous scheme; and there is no apology for that driving, galloping speed which shall anticipate their voice, and, in its consequences, must despoil them of this right.

The debate was continued from day to day. On the 7th of February Mr. Douglas proposed still another change in his bill. There seemed to be a perpetual difficulty in adjusting the language by which the existing Prohibition of Slavery should be overthrown. He now moved to strike out the words referring to this Prohibition, and to insert the following: —

"Which, being inconsistent with the principles of non-intervention by Congress with Slavery in the States and Territories, as recognized by the legislation of 1850, commonly called the Compromise Measures, is hereby declared inoperative and void: it being the true intent and meaning of this Act not to legislate Slavery into any Territory or State, nor to exclude it

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therefrom, but to leave the people thereof perfectly free to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States."

On the 15th of February this amendment was adopted by a vote of thirty-five yeas to ten nays. The debate was then continued upon the pending substitute reported by the Committee for the original bill.

On the 21st of February Mr. Sumner took the floor and delivered the following speech.

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SPEECH.

MR. PRESIDENT, — I approach this discussion with awe. The mighty question, with untold issues, oppresses me. Like a portentous cloud surcharged with irresistible storm and ruin, it seems to fill the whole heavens, making me painfully conscious how unequal to the occasion I am, — how unequal, also, is all that I can say to all that I feel.

In delivering my sentiments to-day I shall speak frankly, according to my convictions, without concealment or reserve. If anything fell from the Senator from Illinois [Mr. DOUGLAS], in opening this discussion, which might seem to challenge a personal contest, I desire to say that I shall not enter upon it. Let not a word or a tone pass my lips to divert attention for a moment from the surpassing theme, by the side of which Senators and Presidents are but dwarfs. I would not forget those amenities which belong to this place, and are so well calculated to temper the antagonism of debate; nor can I cease to remember, and to feel, that, amidst all diversities of opinion, we are the representatives of thirty-one sister republics, knit together by indissoluble ties, and constituting that Plural Unit which we all embrace by the endearing name of country.

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The question for your consideration is not exceeded in grandeur by any which has occurred in our national history since the Declaration of Independence. In every aspect it assumes gigantic proportions, whether we consider simply the extent of territory it affects, or the public faith and national policy which it assails, or that higher question — that *Question of Questions*, as far above others as Liberty is above the common things of life — which it opens anew for judgment.

It concerns an immense region, larger than the original Thirteen States, vying in extent with all the existing Free States, — stretching over prairie, field, and forest, — interlaced by silver streams, skirted by protecting mountains, and constituting the heart of the North American continent, — only a little smaller, let me add, than three great European countries combined, — Italy, Spain, and France, — each of which, in succession, has dominated over the globe. This territory has been likened, on this floor, to the Garden of God. The similitude is found not merely in its pure and virgin character, but in its actual geographical situation, occupying central spaces on this hemisphere, which, in their general relations, may well compare with that "happy rural seat." We are told that

> "Southward through Eden went a river large":

so here a stream flows southward which is larger than the Euphrates. And here, too, all amid the smiling products of Nature, lavished by the hand of God, is the lofty Tree of Liberty, planted by our fathers, which, without exaggeration, or even imagination, may be likened to

> "the Tree of Life,
> High eminent, blooming ambrosial fruit
> Of vegetable gold."

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It is with regard to this territory that you are now called to exercise the grandest function of lawgiver, by establishing rules of polity which will determine its future character. As the twig is bent the tree inclines; and the influences impressed upon the early days of an empire, like those upon a child, are of inconceivable importance to its future weal or woe. The bill now before us proposes to organize and equip two new territorial establishments, with Governors, Secretaries, Legislative Councils, Legislators, Judges, Marshals, and the whole machinery of civil society. Such a measure at any time would deserve the most careful attention. But at the present moment it justly excites peculiar interest, from the effort made — on pretences unsustained by facts, in violation of solemn covenant, and in disregard of the early principles of our fathers — to open this immense region to Slavery.

According to existing law, this territory is now guarded against Slavery by a positive Prohibition, embodied in the Act of Congress approved March 6th, 1820, preparatory to the admission of Missouri into the Union as a sister State, and in the following explicit words: —

"SEC. 8. *And be it further enacted*, That in all that territory *ceded by France to the United States, under the name of Louisiana*, which lies north of thirty-six degrees and thirty minutes north latitude, not included within the limits of the State contemplated by this Act, SLAVERY AND INVOLUNTARY SERVITUDE, otherwise than in the punishment of crimes, whereof the parties shall have been duly convicted, SHALL BE, AND IS HEREBY, FOREVER PROHIBITED."

It is now proposed to set aside this Prohibition. But there seems to be a singular indecision as to the way

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in which the deed shall be done. From the time of its first introduction, in the Report of the Committee on Territories, the proposition has assumed different shapes; and it promises to assume as many as Proteus, — now one thing in form, and now another, — now like a serpent, and then like a lion, — but in every form and shape identical in substance; with but one object, — the overthrow of the Prohibition of Slavery. At first it proposed simply to declare that the States formed out of this territory should be admitted into the Union "with or without Slavery," and did not directly assume to touch this Prohibition. For some reason this was not satisfactory, and then it was precipitately proposed to declare that the Prohibition in the Missouri Act "was superseded by the principles of the legislation of 1850, commonly called the Compromise Measures, and is hereby declared inoperative." But this would not do; and it is now proposed to enact, that the Prohibition, "being inconsistent with the principles of non-intervention by Congress with Slavery in the States and Territories, as recognized by the legislation of 1850, commonly called the Compromise Measures, is hereby declared inoperative and void."

All this is to be done on pretences founded upon the Slavery enactments of 1850. Now, Sir, I am not here to speak in behalf of those measures, or to lean in any way upon their support. Relating to different subject-matters, contained in different acts, which prevailed successively, at different times, and by different votes, — some persons voting for one, and some for another, and very few for all, — they cannot be regarded as a *unit*, embodying conditions of compact, or compromise,

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if you please, adopted equally by all, and therefore obligatory on all. But since this broken series of measures is adduced as apology for the proposition now before us, I desire to say, that, such as they are, they cannot, by any rule of interpretation, by any charming rod of power, by any magic alchemy, be transmuted into a repeal of that original Prohibition.

On this head there are several points to which I would merely call attention, and then pass on. *First:* The Slavery enactments of 1850 did not pretend, in terms, to touch, much less to change, the condition of the Louisiana Territory, which was already fixed by Congressional enactment. The two transactions related to different subject-matters. *Secondly:* The enactments do not directly touch the subject of Slavery, during the Territorial existence of Utah and New Mexico; but they provide prospectively, that, when admitted as States, they shall be received "with or without Slavery." Here certainly can be no overthrow of an Act of Congress which directly concerns a Territory *during its Territorial existence. Thirdly:* During all the discussion of these measures in Congress, and afterwards before the people, and through the public press, at the North and the South alike, no person was heard to intimate that the Prohibition of Slavery in the Missouri Act was in any way disturbed. *Fourthly:* The acts themselves contain a formal provision, that "nothing herein contained shall be construed to impair or qualify anything" in a certain article of the Resolution annexing Texas, where it is expressly declared, that, in any State formed out of territory north of the Missouri Compromise line, "Slavery or involuntary servitude, except for crime, shall be prohibited."

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I do not dwell on these things. These pretences have been amply refuted by able Senators who have preceded me. It is clear, beyond contradiction, that the Prohibition of Slavery in this Territory was not superseded, or in any way contravened, by the Slavery Acts of 1850. The proposition before you is, therefore, original in character, without sanction from any former legislation, and it must, accordingly, be judged by its merits, as an original proposition.

Here, Sir, let it be remembered that the friends of Freedom are not open to any charge of aggression. They are now standing on the defensive, guarding the early intrenchments thrown up by our fathers. No proposition to abolish Slavery anywhere is now before you, but, on the contrary, a proposition to abolish Freedom. The term Abolitionist, so often applied in reproach, justly belongs, on this occasion, to him who would overthrow this well-established landmark. He is, indeed, no Abolitionist of Slavery; let him be called, Sir, Abolitionist of Freedom. For myself, whether with many or few, my place is taken. Even if alone, my feeble arm should not be wanting as a bar against this outrage.

On two distinct grounds, "strong both against the deed," I arraign it: *First*, in the name of Public Faith, as an infraction of solemn obligations, assumed beyond recall by the South, on the admission of Missouri into the Union as a Slave State. *Secondly*, I arraign it in the name of Freedom, as an unjustifiable departure from the original Antislavery policy of our fathers. These two heads I shall consider in their order, glancing, under the latter, at the objections to the Prohibition of Slavery in the Territories.

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Before I approach the argument, indulge me with a few preliminary words on the character of this proposition. Slavery is the forcible subjection of one human being, in person, labor, and property, to the will of another. In this simple statement is involved its whole injustice. There is no offence against religion, against morals, against humanity, which, in the license of this enormity, may not stalk "unwhipped of justice." For the husband and wife there is no marriage; for the mother there is no assurance that her infant child will not be ravished from her breast; for all who bear the name of Slave there is nothing that they can call their own. Without a father, without a mother, almost without a God, the slave has nothing but a master. It would be contrary to that Rule of Right which is ordained by God, if such a system, though mitigated often by patriarchal kindness, and by plausible physical comfort, could be otherwise than pernicious. It is confessed that the master suffers not less than the slave. And this is not all. The whole social fabric is disorganized; labor loses its dignity; industry sickens; education finds no schools; and all the land of Slavery is impoverished. And now, Sir, when the conscience of mankind is at last aroused to these things, when, throughout the civilized world, a slave-dealer is a by-word and a reproach, we, as a nation, are about to open a new market to the traffickers in flesh that haunt the shambles of the South. Such an act, at this time, is removed from all reach of that palliation often vouchsafed to Slavery. This wrong, we are speciously told by those who seek to defend it, is not our original sin. It was entailed upon us, so we are instructed, by our ancestors; and the responsibility is often thrown, with exultation, upon the mother coun-

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try. Now, without stopping to inquire into the value of this apology, which is never adduced in behalf of other abuses, and which availed nothing against that kingly power imposed by the mother country, but overthrown by our fathers, it is sufficient for the present purpose to know that it is now proposed to make Slavery our own original act. Here is a fresh case of actual transgression, which we cannot cast upon the shoulders of any progenitors, nor upon any mother country, distant in time or place. The Congress of the United States, the people of the United States, at this day, in this vaunted period of light, will be responsible for it, so that it shall be said hereafter, so long as the dismal history of Slavery is read, that in the year of Christ 1854 a new and deliberate act was passed by which a vast territory was opened to its incursions.

Historic instances show how such an act will make us solitary among the nations. In autocratic Russia, the serfdom which constitutes the "peculiar institution" of that great empire is never allowed to travel with the imperial flag, according to American pretension, into provinces newly acquired by the common blood and treasure, but, by positive prohibition, in harmony with the general conscience, is carefully restricted within its ancient confines; and this prohibition — the Wilmot Proviso of Russia — is rigorously enforced on every side, in all the provinces, as in Bessarabia on the south, and Poland on the west, so that, in fact, no Russian nobleman is able to move into these important territories with his slaves. Thus Russia speaks for Freedom, and disowns the slaveholding dogma of our country. India, the land of caste, and Turkey, the abode of polygamy, both fasten upon Slavery the stigma of repro-

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bation. The Barbary States of Africa, occupying the same parallels of latitude with the Slave States of our Union, and resembling them in the nature of their boundaries, their productions, their climate, and the "peculiar institution" which sought shelter in both, are changed into Abolitionists. Algiers, seated on the line of 36° 30′, is dedicated to Freedom. Tunis and Morocco are doing likewise.

As the effort now making is extraordinary in character, so no assumption seems too extraordinary to be advanced in its support. The primal truth of the Equality of Men, proclaimed in our Declaration of Independence, is assailed, and this Great Charter of our country discredited. Sir, you and I will soon pass away, but that charter will continue to stand above impeachment or question. The Declaration of Independence was a Declaration of Rights, and the language employed, though general in character, must obviously be confined within the design and sphere of a Declaration of Rights, involving no such pitiful absurdity as was attributed to it yesterday by the Senator from Indiana [Mr. PETTIT]. Sir, who has pretended that all men are born equal in physical strength or in mental capacities, in beauty of form or health of body? Certainly not the signers of the Declaration of Independence, who could have been guilty of no such self-stultification. Diversity is the law of creation, unrestricted to race or color. But as God is no respecter of persons, and as all are equal in his sight, both Dives and Lazarus, master and slave, so are all equal in natural inborn rights; and pardon me, if I say it is a mere quibble to adduce, in argument against this vital axiom of Liberty, the physical or mental inequalities by which men are

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characterized, or the unhappy degradation to which, in violation of a common brotherhood, they are doomed. To deny the Declaration of Independence is to rush on the bosses of the shield of the Almighty, — which, in all respects, the supporters of this measure seem to do.

To the delusive suggestion of the Senator from North Carolina [Mr. BADGER], that by overthrow of this Prohibition the number of slaves will not be increased, that there will be simply a beneficent diffusion of Slavery, and not its extension, I reply at once, that this argument, if of any value, if not mere words and nothing else, would equally justify and require the overthrow of the Prohibition of Slavery in the Free States, and, indeed, everywhere throughout the world. All the dikes, which, in different countries, from time to time, with the march of civilization, have been painfully set up against the inroads of this evil, must be removed, and every land opened anew to its destructive flood. It is clear, beyond dispute, that by the overthrow of this Prohibition Slavery will be quickened, and slaves themselves will be multiplied, while new room and verge will be secured for the gloomy operations of Slave Law, under which free labor will droop, and a vast territory be smitten with sterility. Sir, a blade of grass would not grow where the horse of Attila had trod; nor can any true prosperity spring up in the footprints of a slave.

But it is argued that slaves will be carried into Nebraska only in small numbers, and therefore the question is of little practical moment. My distinguished colleague [Mr. EVERETT], in his eloquent speech, hearkened to this apology, and allowed himself, while up-

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holding the Prohibition, to disparage its importance in a manner from which I feel obliged, kindly, but most strenuously, to dissent. Sir, the very census attests its vital consequence. There is Missouri, at this moment, with Illinois on the east and Nebraska on the west, all covering nearly the same spaces of latitude, and resembling each other in soil, climate, and natural productions. Mark now the contrast! By the potent efficacy of the Ordinance of the Northwestern Territory Illinois is a Free State, while Missouri has eighty-seven thousand four hundred and twenty-two slaves; and the simple question which challenges answer is, whether Nebraska shall be preserved in the condition of Illinois or surrendered to that of Missouri? Surely this cannot be treated lightly. But I am unwilling to measure the exigency of the Prohibition by the number of persons, whether many or few, whom it may protect. Human rights, whether in a multitude or the solitary individual, are entitled to equal and unhesitating support. In this spirit, the flag of our country only recently became the impenetrable panoply of a homeless wanderer who claimed its protection in a distant sea;[1] and in this spirit I am constrained to declare that there is no place accessible to human avarice or human lust or human force, whether the lowest valley or the loftiest mountain-top, whether the broad flower-spangled prairies or the snowy caps of the Rocky Mountains, where the Prohibition of Slavery, like the commandments of the Decalogue, should not go.

[1] Martin Koszta, Hungarian by birth, who had made the preliminary declaration of citizenship, and had a protection from the United States Consul at Smyrna, was, July 2, 1853, surrendered by an Austrian man-of-war in the harbor of Smyrna at the demand of a man-of-war of the United States.

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I.

AND now, Sir, in the name of that Public Faith which is the very ligament of civil society, and which the great Roman orator tells us it is detestable to break even with an enemy, I arraign this scheme, and hold it up to the judgment of the country. There is an early Italian story of an experienced citizen, who, when told by his nephew, at the University of Bologna, that he had been studying the science of *Right*, said in reply, "You have spent your time to little purpose. It would have been better, had you learned the science of *Might*, for that is worth two of the other"; and the bystanders of that day all agreed that the veteran spoke the truth. I begin, Sir, by assuming that honorable Senators will not act in this spirit, — that they will not wantonly and flagitiously discard any obligation, pledge, or covenant, because they chance to possess the power, — that they will not substitute *might* for *right*.

Sir, the proposition before you involves not merely the repeal of existing law, but the infraction of solemn obligations, originally proposed and assumed by the South, after protracted and embittered contest, as a covenant of peace, with regard to certain specified territory therein described, namely, "All that territory ceded by France to the United States, under the name of Louisiana," — according to which, in consideration of the admission into the Union of Missouri as a Slave State, Slavery was forever prohibited in all the remaining part of this territory which lies north of 36° 30′. This arrangement between different sections of the Union, the Slave States of the first part and the Free States of the second part, though usually known as

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the Missouri Compromise, was at the time styled a COMPACT. In its stipulations for Slavery, it was justly repugnant to the conscience of the North, and ought never to have been made; but on that side it has been performed. And now the unperformed outstanding obligations to Freedom, originally proposed and assumed by the South, are resisted.

Years have passed since these obligations were embodied in the legislation of Congress, and accepted by the country. Meanwhile the statesmen by whom they were framed and vindicated have, one by one, dropped from this earthly sphere. Their living voices cannot now be heard, for the conservation of that Public Faith to which they were pledged. But this extraordinary lapse of time, with the complete fruition by one party of all the benefits belonging to it under the compact, gives to the transaction an added and most sacred strength. Prescription steps in and with new bonds confirms the original work, to the end, that, while men are mortal, controversies shall not be immortal. Death, with inexorable scythe, has mowed down the authors of this compact; but, with conservative hour-glass, the dread destroyer has counted out a succession of years, which now defile before us, like so many sentinels, to guard the sacred landmark of Freedom.

A simple statement of facts, derived from the Journals of Congress and contemporary records,[1] will show the origin and nature of this compact, the influence

[1] As the volumes of the Annals of Congress covering the proceedings on the Missouri Compromise were not published when this speech was made, Mr. Sumner was obliged to rely upon the National Intelligencer and Niles's Register. In the present edition references are made to the Annals of Congress.

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by which it was established, and the obligations it imposed.

As early as 1818, at the first session of the Fifteenth Congress, a bill was reported to the House of Representatives, authorizing the people of the Missouri Territory to form a Constitution and State Government, for the admission of such State into the Union; but at that session no final action was had. At the next session, in February, 1819, the bill was again brought forward, when an eminent Representative of New York, whose life was spared till this last autumn, Mr. James Tallmadge, moved a clause prohibiting any further introduction of slaves into the proposed State, and securing Freedom to the children born within the State, after admission into the Union, on attaining the age of twenty-five years. This important proposition, which assumed a power not only to prohibit the ingress of Slavery into the State, *but also to abolish it there*, was passed in the affirmative, after a vehement debate of three days. On a division of the question, the first part, prohibiting the further introduction of slaves, was adopted by eighty-seven yeas to seventy-six nays; the second part, providing for the emancipation of children, was adopted by eighty-two yeas to seventy-eight nays. Other propositions to thwart the operation of these amendments were voted down, and on the 17th of February the bill was read a third time, and passed with these important restrictions.

In the Senate, after debate, the provision for the emancipation of children was struck out by thirty-one yeas to seven nays; the other provision, against the further introduction of Slavery, was struck out by twenty-two yeas to sixteen nays. Thus emasculated,

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the bill was returned to the House, which, on the 2d of March, by a vote of seventy-eight nays to seventy-six yeas, refused its concurrence. The Senate adhered to their amendments, and the House, by seventy-eight yeas to sixty-six nays, adhered to their disagreement; and so at this session the Missouri Bill was lost: and here was a temporary triumph for Freedom.

Meanwhile the same controversy was renewed on the bill pending at the same time for the organization of the Territory of Arkansas, then known as the southern part of the Territory of Missouri. The restrictions already adopted in the Missouri Bill were moved by Mr. Taylor, of New York, subsequently Speaker; but, after at least five close votes, on the yeas and nays, in one of which the House was equally divided, eighty-eight yeas to eighty-eight nays, they were lost. Another proposition by Mr. Taylor, simpler in form, that Slavery should not hereafter be introduced into this Territory, was lost by ninety nays to eighty-six yeas; and the Arkansas Bill, on the 20th of February, was read the third time and passed. In the Senate, Mr. Burrill, of Rhode Island, moved, as an amendment, the prohibition of the further introduction of Slavery into this Territory, which was lost by nineteen nays to fourteen yeas. And thus, without any provision for Freedom, Arkansas was organized as a Territory: and here was a triumph of Slavery.

At this same session Alabama was admitted as a Slave State, without any restriction or objection.

It was in the discussion on the Arkansas Bill, at this session, that we find the earliest suggestion of a Compromise. Defeated in his efforts to prohibit Slavery in this Territory, Mr. Taylor stated that "he thought it

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important that some line should be designated beyond which Slavery should not be permitted," and he moved its prohibition hereafter in all Territories of the United States north of 36° 30′ north latitude, *without any exception of Missouri, which is north of this line.* This proposition, though withdrawn after debate, was at once welcomed by Mr. Livermore, of New Hampshire, as "made in the true spirit of *compromise.*" It was opposed by Mr. Rhea, of Tennessee, on behalf of Slavery, who avowed himself against every restriction, — and also by Mr. Ogle, of Pennsylvania, on behalf of Freedom, who was "opposed to any compromise by which Slavery in any of the Territories should be recognized or sanctioned by Congress." In this spirit it was opposed and supported by others, among whom was General Harrison, afterwards President of the United States, who "assented to the expediency of establishing some such line of discrimination," but proposed a line due west from the mouth of the Des Moines, thus constituting the northern, and not the southern boundary of Missouri, the partition line between Freedom and Slavery.

This idea of Compromise, though suggested by Mr. Taylor, was thus early adopted and vindicated in this very debate by an eminent character — Mr. Louis McLane, of Delaware — who has since held high office in the country,[1] and enjoyed no common measure of public confidence. Of all the leading actors in these early scenes, he and Mr. Mercer alone are yet spared. On this occasion he said: —

"The fixing of a line on the west of the Mississippi, north of which Slavery should not be tolerated, *had always been with*

[1] Secretary of State and Minister to England under President Jackson, and a second time Minister to England under President Polk.

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him a favorite policy, and he hoped the day was not distant, when, upon principles of *fair compromise*, it might constitutionally be effected." [1]

The present attempt, however, he regarded as premature. After opposing the restriction on Missouri, he concluded by declaring: —

"At the same time, I do not mean to abandon the policy to which I alluded in the commencement of my remarks. I think it but fair that both sections of the Union should be accommodated on this subject, with regard to which so much feeling has been manifested. The same great motives of policy which reconciled and harmonized the jarring and discordant elements of our system originally, and which enabled the framers of our happy Constitution to compromise the different interests which then prevailed upon this and other subjects, if properly cherished by us, will enable us to achieve similar objects. If we meet upon principles of reciprocity, we cannot fail to do justice to all. *It has already been avowed by gentlemen on this floor, from the South and the West, that they will agree upon a line which shall divide the slaveholding from the non-slaveholding States. It is this proposition I am anxious to effect; but I wish to effect it by some* COMPACT *which shall be binding upon all parties and all subsequent Legislatures*, — which cannot be changed, and will not fluctuate with the diversity of feeling and of sentiment to which this empire, in its march, must be destined. There is a vast and immense tract of country west of the Mississippi yet to be settled, and intimately connected with the northern section of the Union, *upon which this compromise can be effected*." [2]

The suggestions of Compromise were at this time vain: each party was determined. The North, by the

[1] Annals of Congress, 15th Cong. 2d Sess., Feb. 17, 1819, Vol II. col. 1228.
[2] Ibid., 1235.

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prevailing voice of its Representatives, claimed all for Freedom; the South, by its potential command of the Senate, claimed all for Slavery.

The report of this debate aroused the country. For the first time in our history, Freedom, after animated struggle, hand to hand, was kept in check by Slavery. The original policy of our fathers in the restriction of Slavery was suspended, and this giant wrong threatened to stalk into all the broad national domain. Men at the North were humbled and amazed. The imperious demands of Slavery seemed incredible. Meanwhile the whole subject was adjourned from Congress to the people. Through the press and at public meetings, an earnest voice was raised against the admission of Missouri into the Union without the restriction of Slavery. Judges left the bench, and clergymen the pulpit, to swell the indignant protest which went up from good men without distinction of party or pursuit.

The movement was not confined to a few persons, nor to a few States. A public meeting at Trenton, in New Jersey, was followed by others in New York and Philadelphia, and finally at Worcester, Salem, and Boston, where committees were organized to rally the country. The citizens of Baltimore, in public meeting at the court-house, with the mayor in the chair, resolved "that the future admission of slaves into the States which may hereafter be formed west of the Mississippi ought to be prohibited by Congress." Villages, towns, and cities, by memorial, petition, and prayer, called upon Congress to maintain the great principle of the Prohibition of Slavery. The same principle was also commended by the resolutions of State Legislatures; and Pennsylvania, inspired by the teachings of Franklin and the convictions

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of the respectable denomination of Friends, unanimously asserted at once the right and the duty of Congress to prohibit Slavery west of the Mississippi, solemnly calling upon her sister States "to refuse to covenant with crime." New Jersey and Delaware followed. Ohio asserted the same principle: so did Indiana. The latter State, not content with providing for the future, severely censured one of its Senators for his vote to organize Arkansas without the prohibition of Slavery. The resolutions of New York were reinforced by the recommendation of De Witt Clinton.[1]

Amidst these excitements Congress came together in December, 1819, taking possession of these Halls of the Capitol for the first time since their desolation by the British. On the day after the receipt of the President's Message two several Committees of the House were constituted, one to consider the application of Maine, and the other of Missouri, to enter the Union as separate and independent States. With only the delay of a single day, the bill for the admission of Missouri was reported to the House without the restriction of Slavery; but, as if shrinking from the immediate discussion of the great question it involved, afterwards, on motion of Mr. Taylor, of New York, modified by Mr. Mercer, of Virginia, its consideration was postponed for several weeks: all which, be it observed, is in open contrast with the manner in which the present discussion has been precipitated upon Congress. Meanwhile the Maine Bill, when reported to the House, was promptly acted upon, and sent to the Senate.

In the interval between the report of the Missouri Bill and its consideration by the House, a Committee

[1] See Niles's Weekly Register, Vol. XVII. *passim*.

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was constituted, on motion of Mr. Taylor, of New York, to inquire into the expediency of prohibiting the introduction of Slavery into the Territories west of the Mississippi. This Committee, at the end of a fortnight, was discharged from further consideration of the subject, which, it was understood, would enter into the postponed debate on the Missouri Bill.

This early effort to interdict Slavery in the Territories by special law is worthy of notice on account of expressions of opinion it drew forth. In the course of his remarks, Mr. Taylor declared that "he presumed there was no member — he knew of none — who doubted the constitutional power of Congress to impose such a restriction on the Territories."[1]

A generous voice from Virginia recognized at once the right and duty of Congress. This was from Charles Fenton Mercer, who declared, that, "when the question proposed should come fairly before the House, he should support the proposition. . . . . He should record his vote against suffering the dark cloud of calamity which now darkened his country from rolling on beyond the peaceful shores of the Mississippi."[2]

At length, on the 25th of January, 1820, the House resolved itself into Committee of the Whole on the Missouri Bill, and proceeded with its discussion, day by day, till the 28th of February, when it was reported back with an amendment excluding Slavery from the proposed State. At the opening of the debate an amendment was offered with a view to Compromise, when Mr. Smith, of Maryland, for many years an eminent Senator of that State, but at this time a Representative, while opposing the restriction of Missouri,

[1] Annals of Congress, 16th Cong. 1st Sess., I. 802. [2] Ibid., 803.

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vindicated the prohibition of Slavery in the Territories.

"He said that he rose principally with a view to state his understanding of the proposed amendment, namely: That it retained the boundaries of Missouri as delineated in the bill; that it prohibited the admission of slaves west of the west line of Missouri, and north of the north line; that it did not interfere with the Territory of Arkansas, or the uninhabited land west thereof. *He thought the proposition not exceptionable*, but doubted the propriety of its forming a part of the bill. He considered the power of Congress over the Territory as supreme, unlimited, before its admission; that Congress could impose on its Territories any restriction it thought proper; and the people, when they settled therein, did so under a full knowledge of the restriction. If citizens go into the Territory thus restricted, they cannot carry with them slaves. They will be without slaves, and will be educated with prejudices and habits such as will exclude all desire on their part to admit Slavery, when they shall become sufficiently numerous to be admitted as a State. And this is the advantage proposed by the amendment."[1]

Meanwhile the same question was presented to the Senate, where a conclusion was reached earlier than in the House. A clause for the admission of Missouri was moved by way of tack to the Maine Bill. To this an amendment was moved by Mr. Roberts, of Pennsylvania, prohibiting the further introduction of Slavery into the State, which, after a fortnight's debate, was defeated by twenty-seven nays to sixteen yeas.

The debate in the Senate was of unusual interest and splendor. It was especially illustrated by an effort of eminent power from that great lawyer and orator, Wil-

[1] Annals of Congress, *ut supra*, I. 940, 941, January 26, 1820.

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liam Pinkney. Recently returned from a succession of missions to foreign courts, and at this time the acknowledged chief of the American bar, particularly skilled in questions of Constitutional Law, his course as a Senator from Maryland was calculated to produce a profound impression. A speech from him, which for two days [1] drew to this Chamber an admiring throng, and at the time was fondly compared with the best examples of Greece and Rome, is without any record; but another, made shortly afterwards, remains to us, and here we find the first authoritative proposition and statement of what has been since known as the Missouri Compromise. This latter effort was mainly directed against the restriction upon Missouri, but it began and ended with the idea of Compromise. "Notwithstanding," he says, "occasional appearances of rather an unfavorable description, I have long since persuaded myself that the *Missouri question*, as it is called, might be laid to rest with innocence and safety by some *conciliatory compromise* at least, by which, as is our duty, we might reconcile the extremes of conflicting views and feelings, without any sacrifice of constitutional principle." And he closed with the hope that the restriction on Missouri would not be pressed, but that the whole question "might be disposed of in a manner satisfactory to all, *by a prospective prohibition of Slavery in the territory to the north and west of Missouri.*" [2] Here let me remark, that, in the nomenclature of the time, the term "restriction" was applied to the requirement of Freedom proposed for the State of Missouri, while the term "prohibition" was applied to the outlying territory north of a certain line.

[1] January 21 and 24, 1820: Annals of Congress, *ut supra*, I. 282, 286.

[2] Ibid., I. 389–417, February 15, 1820. Wheaton's Life of Pinkney, Appendix, pp. 573–612.

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The compromise proposed was abandonment of the "restriction," with recognition of the "prohibition."

This authoritative proposition of Compromise from the most powerful advocate of the unconditional admission of Missouri, was made in the Senate on the 15th of February. From various indications, it seems to have found prompt favor in that body. On the 16th of February, the union of Maine and Missouri in one bill prevailed there by twenty-three yeas to twenty-one nays. The next day, Mr. Thomas, of Illinois, who had always voted with the South against any restriction upon Missouri, introduced the famous clause prohibiting Slavery in territory north of 36° 30′ outside this State, which constitutes the eighth section of the Missouri Act. An effort was made to include within the prohibition "the whole country west of the Mississippi, except Louisiana, Arkansas, and Missouri"; but the South united against such extension of the area of Freedom, and it was defeated by twenty-four nays to twenty yeas. The prohibition, as moved by Mr. Thomas, then prevailed by thirty-four yeas to only ten nays. Among those in the affirmative were both the Senators from each of the Slave States, Louisiana, Tennessee, Kentucky, Delaware, Maryland, and Alabama, and also one of the Senators from each of the Slave States, Mississippi and North Carolina, including in the honorable list the familiar names of William Pinkney, James Brown, and William Rufus King.

This bill, thus amended, is the first legislative embodiment of the Missouri Compact or Compromise, the essential conditions of which were the admission of Missouri as a State without any restriction of Slavery, and the prohibition of Slavery in all the remaining ter-

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ritory of Louisiana north of 36° 30′.[1] Janus-faced, with one front towards Freedom and another towards Slavery, this must not be confounded with the simpler proposition of Mr. Taylor, at the preceding session, to prohibit Slavery in all the territory north of 36° 30′, including Missouri. The compromise now brought forward, following the early lead of Mr. McLane, both recognized and prohibited Slavery north of 36° 30′. Here, for the first time, these two opposite principles commingled in one legislative channel; and it is immediately subsequent to this junction that we discern the precise responsibility assumed by different parties. And now observe the indubitable and decisive fact. This bill, thus composed, containing these two elements, this double measure, finally passed the Senate by a test vote of twenty-four yeas to twenty nays. The yeas embraced every Southern Senator except Nathaniel Macon, of North Carolina, and William Smith, of South Carolina.

MR. BUTLER, of South Carolina (*interrupting*). Mr. Gaillard, of South Carolina, voted with Mr. Smith.

MR. SUMNER. No, Sir: the Journal, which I now hold in my hand, shows that he voted for the bill with the Compromise. I repeat, that the yeas on this vital question embraced every Southern Senator except Mr. Macon and Mr. Smith. The nays embraced every Northern Senator, except the two Senators from Illinois, one Senator from Rhode Island, and one from New Hampshire. And this, Sir, is the record of the first stage in the

[1] The eminent Judge Story, who was then in Washington, mentions these conditions in a private letter, under date of February 27, 1820, as follows: "There is a great deal of heat and irritation, but most probably a compromise will take place, admitting Missouri into the Union without the restriction, and imposing it on all the other Territories." — *Letter to Stephen White, Esq.*: Life and Letters of Story, Vol. I. pp. 362, 363.

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adoption of the Missouri Compromise. First openly announced and vindicated on the floor of the Senate by a distinguished Southern statesman, it was forced on the North by an almost unanimous Southern vote.

While things had thus culminated in the Senate, discussion was still proceeding in the House on the original Missouri Bill. This was for a moment arrested by the reception from the Senate of the Maine Bill, amended by tacking to it a bill for the admission of Missouri, embodying the Compromise. Upon this the debate was brief and the decision prompt. The House was not disposed to abandon the substantial restriction of Slavery in Missouri for what seemed its unsubstantial prohibition in an unsettled territory. The Senate's amendments to the Maine Bill were all rejected, and the bill left in its original condition. This was done by large votes. Even the Prohibition of Slavery was thrown out, by one hundred and fifty-nine yeas to eighteen nays, both North and South uniting against it, — though, in this small, but persistent minority, we find two Southern statesmen, Samuel Smith and Charles Fenton Mercer. The Senate, on receiving the bill back from the House, insisted on their amendments. The House in turn insisted on their disagreement. According to parliamentary usage, a Committee of Conference between the two Houses was now appointed. Mr. Thomas, of Illinois, Mr. Pinkney, of Maryland, and Mr. James Barbour, of Virginia, composed this important Committee on the part of the Senate; and Mr. Holmes, of Massachusetts, from the District of Maine, Mr. Taylor, of New York, Mr. Lowndes, of South Carolina, Mr. Parker, of Massachusetts, and Mr. Kinsey, of New Jersey, on the part of the House.

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Meanwhile the House voted on the original Missouri Bill. An amendment peremptorily interdicting all Slavery in the new State was adopted by ninety-four yeas to eighty-six nays; and thus the bill passed the House and was sent to the Senate on the 1st of March. So, after an exasperated and protracted discussion, the two Houses were at a dead-lock. The double-headed Missouri Compromise was the ultimatum of the Senate. The restriction of Slavery in Missouri, involving, of course, its prohibition in all the unorganized territories, was the ultimatum of the House.

At this stage, on the 2d of March, the Committee of Conference made their report, which was urged at once upon the House by Mr. Lowndes, the distinguished representative from South Carolina, and one of her most cherished sons. And here, Sir, at the mention of this name, still so fragrant among us, let me for one moment stop this current of history, to express the honest admiration with which he inspires me. Mr. Lowndes died before my memory of political events, but he is still endeared by the self-abnegation of a single utterance, — *that the Presidency is an office not to be sought or declined*, — a sentiment which by its beauty, in one part at least, shames the vileness of aspiration in our day. Such a man, on any occasion, would be a host; but he now threw his great soul into the work. He even objected to a motion to print the Report, on the ground "that it would imply a determination in the House to delay a decision of the subject to-day, which he had hoped the House was fully prepared for." The question then followed on striking out the restriction in the Missouri Bill. The report in the "National Intelligencer" [1] says: —

[1] See also Annals of Congress, *ut supra*, II. 1578, 1586, March 2, 1820.

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"Mr. Lowndes spoke briefly in support of the Compromise recommended by the Committee of Conference, and urged with great earnestness the propriety of a decision which would restore tranquillity to the country, which was demanded by every consideration of discretion, of moderation, of wisdom, and of virtue."

"Mr. Mercer [of Virginia] followed on the same side with great earnestness, and had spoken about half an hour, when he was compelled by indisposition to resume his seat."

Such efforts, pressed with Southern ardor, were not unavailing. In conformity with the report of the Committee, the whole question was forthwith put at rest. Maine and Missouri were admitted into the Union as independent States. The restriction of Slavery in Missouri was abandoned by a vote in the House of ninety yeas to eighty-seven nays; and the prohibition of Slavery in territories north of 36° 30′, exclusive of Missouri, was substituted by a vote of one hundred and thirty-four yeas to forty-two nays. Among the distinguished Southern names in the affirmative are Louis McLane, of Delaware, Samuel Smith, of Maryland, William Lowndes, of South Carolina, and Charles Fenton Mercer, of Virginia. The title of the Missouri Bill was amended in conformity with this prohibition, by adding the words, "and to prohibit Slavery in certain Territories." *The bills then passed both Houses without a division;* and on the morning of the 3d of March, 1820, the "National Intelligencer" contained an exulting article, entitled "The Question Settled."

Another paper, published in Baltimore, immediately after the passage of the Compromise, vindicated it as a perpetual compact, which could not be disturbed. The language is so clear and strong that I will read it, al-

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though it has been already quoted by my able and excellent friend from Ohio [Mr. CHASE].

"*It is true, the Compromise is supported only by the letter of a law repealable by the authority which enacted it; but the circumstances of the case give to this law a* MORAL FORCE *equal to that of a positive provision of the Constitution; and we do not hazard anything by saying that the Constitution exists in its observance.* Both parties have sacrificed much to conciliation. *We wish to see the* COMPACT *kept in good faith,* and trust that a kind Providence will open the way to relieve us of an evil which every good citizen deprecates as the supreme curse of this country."[1]

Sir, the distinguished leaders in this settlement were all from the South. As early as February, 1819, Louis McLane, of Delaware, urged it upon Congress, in the form of a "compact binding upon all subsequent Legislatures." It was in 1820 brought forward and upheld in the Senate by William Pinkney, of Maryland, and passed in that body by the vote of every Southern Senator except two, against the vote of every Northern Senator except four. In the House it was welcomed at once by Samuel Smith, of Maryland, and Charles Fenton Mercer, of Virginia. The Committee of Conference, through which it finally prevailed, was filled, on the part of the Senate, with inflexible partisans of the South, such as might fitly represent the sentiments of its President, John Gaillard, a Senator from South Carolina; on the part of the House, it was nominated by Henry Clay, the Speaker, a Representative from Kentucky. This Committee, thus constituted, drawing its double life from the South, was unanimous in favor of the Compromise, with but one dissenting voice, and that from the North, —

[1] Niles's Weekly Register, March 11, 1820.

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John W. Taylor, of New York. A private letter from Mr. Pinkney, written at the time, and preserved by his distinguished biographer, shows that the report made by the Committee came from him.

"The bill for the admission of Missouri into the Union (*without* restriction as to Slavery) may be considered as passed. That bill was sent back again this morning from the House, *with the restriction as to Slavery.* The Senate voted to amend it by striking out the restriction (twenty-seven to fifteen), and proposed, as another amendment, *what I have all along been the advocate of, a restriction upon the vacant territory to the north and west, as to Slavery.* To-night the House of Representatives have agreed to *both* of these amendments, in opposition to their former votes, and this affair is settled. To-morrow we shall (of course) recede from our amendments as to Maine (our object being effected), and both States will be admitted. *This happy result has been accomplished by the Conference, of which I was a member on the part of the Senate, and of which I proposed the report which has been made.*"[1]

Thus again the Compromise takes its life from the South. Proposed in the Committee by Mr. Pinkney, it was urged on the House of Representatives, with great earnestness, by Mr. Lowndes, of South Carolina, and Mr. Mercer, of Virginia: and here again is the most persuasive voice of the South. When passed by Congress, it next came before the President, James Monroe, of Virginia, for his approval, who did not sign it till after the *unanimous* opinion, in writing, of his Cabinet, composed of John Quincy Adams, William H. Crawford, John C. Calhoun, Smith Thompson, and William Wirt, — a majority of whom were Southern men, — that the prohibition of Slavery in the Territories was constitutional.

[1] Wheaton's Life of Pinkney, p. 167.

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Thus yet again the Compromise takes its life from the South.

As the Compromise took its life from the South, so, in the judgment of its own statesmen at the time, and according to unquestionable facts, the South was the conquering party. It gained forthwith its darling desire, the first and essential stage in the admission of Missouri as a Slave State, successfully consummated at the next session, — and subsequently the admission of Arkansas, also as a Slave State. From the crushed and humbled North it received more than the full consideration stipulated in its favor. On the side of the North the contract has been more than executed. And now the South refuses to perform the part which it originally proposed and assumed in this transaction. With the consideration in its pocket, it repudiates the bargain which it forced upon the country. This, Sir, is a simple statement of the present question.

A subtile German has declared that he could find heresies in the Lord's Prayer; and I believe it is only in this spirit that any flaw can be found in the existing obligations of this compact. As late as 1848, in the discussions of this body, the Senator from Virginia [Mr. MASON], who usually sits behind me, but who is not now in his seat, while condemning it in many aspects, says: —

"Yet, as it was agreed to, as a Compromise, by the *South*, for the sake of the Union, *I would be the last to disturb it.*"[1]

Even this determined Senator recognized it as an obligation which he would not disturb. And, though disbelieving the original constitutionality of the arrangement, he was clearly right. I know, Sir, that it is in

[1] Congressional Globe, 30th Cong. 1st Sess., Vol. XIX., Appendix, p. 887.

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form simply a Legislative Act; but as the Act of Settlement in England, declaring the rights and liberties of the subject and settling the succession of the Crown, has become a permanent part of the British Constitution, irrepealable by any common legislation, so this Act, under all the circumstances attending its passage, also by long acquiescence, and the complete performance of its conditions by one party, has become part of our fundamental law, irrepealable by any common legislation. As well might Congress at this moment undertake to overhaul the original purchase of Louisiana as unconstitutional, and now, on this account, thrust away that magnificent heritage, with all its cities, States, and Territories, teeming with civilization. The Missouri Compact, in its unperformed obligations to Freedom, stands at this day as impregnable as the Louisiana purchase.

I appeal to Senators about me not to disturb it. I appeal to the Senators from Virginia to keep inviolate the compact made in their behalf by James Barbour and Charles Fenton Mercer. I appeal to the Senators from South Carolina to guard the work of John Gaillard and William Lowndes. I appeal to the Senators from Maryland to uphold the Compromise which elicited the constant support of Samuel Smith, and was first triumphantly pressed by the unsurpassed eloquence of Pinkney. I appeal to the Senators from Delaware to maintain the landmark of Freedom in the Territory of Louisiana early proposed by Louis McLane. I appeal to the Senators from Kentucky not to repudiate the pledges of Henry Clay. I appeal to the Senators from Alabama not to break the agreement sanctioned by the earliest votes in the Senate of their late most honored fellow-citizen, William Rufus King. Sir, I have heard

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of honor that felt a stain like a wound. If there be any such in this Chamber, — and surely there is, — it will hesitate to take upon itself the stain of this transaction.

Sir, Congress may now set aside this obligation, repudiate this plighted faith, annul this compact; and some of you, forgetful of the *majesty of honest dealing*, in order to support Slavery, may consider it advantageous to use this power. To all such let me commend a familiar story. An eminent leader in Antiquity, Themistocles, once announced to the Athenian Assembly, that he had a scheme in contemplation, highly beneficial to the State, but which could not be made public. He was thereupon directed to communicate it to Aristides, surnamed the Just, and, if approved by him, to put it in execution. The brief and memorable judgment of Aristides was, that, while nothing could be more advantageous to Athens, nothing could be more unjust; and the Assembly, responding at once, commanded that the project should be abandoned. It appears that it was proposed to burn the combined Greek fleet, then enjoying the security of peace in a neighboring sea, and thus confirm the naval supremacy of Athens.[1] A similar proposition is now brought before the American Senate. You are asked to destroy a safeguard of Freedom, consecrated by solemn compact, under which the country is reposing in the security of peace, and thus confirm the supremacy of Slavery. To this institution and its partisans the proposition may seem advantageous; but nothing can be more unjust. Let the judgment of the Athenian democracy be yours.

This is what I have to say upon this head. I now pass to the second branch of the argument.

[1] Plutarch, Themistocles.

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II.

MR. PRESIDENT, — It is not only as an infraction of solemn compact, embodied in ancient law, that I oppose this bill; I arraign it as a flagrant and extravagant departure from the original policy of our fathers, consecrated by their lives, opinions, and acts.

[Here Mr. Sumner proceeded to set forth the Antislavery policy at the foundation of the Government, — less fully than in the earlier speech, *Freedom National, Slavery Sectional*, but substantially in the same vein. After alluding to the memorial of Franklin, addressed to the first Congress under the Constitution, he proceeded as follows.]

The memorial of Franklin, with other memorials of a similar character, was referred to a Committee, and much debated in the House, which finally sanctioned the following resolution, and directed the same to be entered upon its Journals, namely: —

"That Congress have no authority to interfere in the emancipation of slaves, or in the treatment of them, within any of the States: *it remaining with the several States alone to provide any regulations therein which humanity and true policy may require.*"[1]

This resolution, declaring the principle of non-intervention by Congress with Slavery in the States, was adopted by the same Congress which had solemnly affirmed the Prohibition of Slavery in all the existing territory of the Union; so that one may be regarded as the complement of the other. And it is on these double acts, at the first organization of the Government, and the recorded sentiments of the founders, that I take my stand, and challenge all question.

In the country, at this time, there was strictly no

[1] Annals of Congress, 1st Cong. 2d Sess., II. 1472-74, March 23, 1790.

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dividing line between Antislavery and Proslavery. The Antislavery sentiment was thoroughly national, broad and general, pervading alike all parts of the Union, and uprising from the common heart of the entire people. The Proslavery interest was strictly personal and pecuniary, and had its source simply in the self-interest of individual slaveholders. It contemplated Slavery only as a domestic institution, not as a political element, and merely stipulated for its security where it actually existed within the States.

Sir, the original policy of the country, begun under the Confederation, and recognized at the initiation of the new Government, is clear and unmistakable. Compendiously expressed, it was *non-intervention by Congress with Slavery in the States, and its prohibition in all the national domain.* In this way discordant feelings on this subject were reconciled. Slave-masters were left at home in their respective States, under the protection of local laws, to hug Slavery without interference from Congress, while all opposed to it were exempted from any responsibility therefor in the national domain. This, Sir, is the common ground on which our political fabric was reared; and I do not hesitate to say that it is the only ground on which it can stand in permanent peace.

. . . . .

Our Republic has swollen in population and power, but it has shrunk in character. It is not now what it was in the beginning, a Republic merely permitting, while it regretted Slavery, — tolerating it only where it could not be removed, and interdicting it where it did not exist, — but a mighty Propagandist, openly favoring and vindicating it, — visiting, also, with displeasure all who oppose it.

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Sir, our country early reached heights which it could not keep. Its fall was gentle, but complete. At the session of Congress immediately following the ratification of the Prohibition of Slavery in the national domain, a transfer of the territory now constituting Tennessee was accepted from North Carolina (2d April, 1790), loaded with the express proviso, "that no regulations made or to be made by Congress shall tend to emancipate slaves": a formal provision, which, while admitting the power of Congress over Slavery in the Territories, waived the prevailing policy of executing it. This was followed, in 1798, by the transfer from Georgia of the region between her present western limit and the Mississippi, under a similar condition. In both these cases apology may be found in the very terms of the transfer, and in the fact that the region constituted part of two States where Slavery actually existed, — though it will be confessed that even here there was a descent from that summit of Freedom on which the Nation had so proudly rested.

Without tracing this downward course through its successive stages, let me refer to facts which too palpably reveal the abyss that has been reached. Early in our history no man was disqualified for public office by reason of his opinions on this subject; and this condition continued for a long period. As late as 1820, John W. Taylor, Representative from New York, who pressed with so much energy, not merely the prohibition of Slavery in the Territories, but its restriction in the State of Missouri, was elected to the chair of Henry Clay, as Speaker of the other House. It is needless to add, that no determined supporter of the prohibition of Slavery in the Territories at this day could expect that eminent

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trust. . . . . To such lowest deep has our Government descended!

These things prepare us to comprehend the true character of the change with regard to the Territories. In 1787 all existing national domain was promptly and unanimously dedicated to Freedom, without opposition or criticism. The interdict of Slavery then covered every inch of soil belonging to the National Government. Louisiana, an immense region beyond the bounds of the original States, was subsequently acquired, and in 1820, after a vehement struggle which shook the whole land, discomfited Freedom was compelled, by a dividing line, to a partition with Slavery. This arrangement, which, in its very terms, was exclusively applicable to a particular territory purchased from France, has been accepted as final down to the present session of Congress; but now, Sir, here in 1854, Freedom is suddenly summoned to surrender even her hard-won moiety. Here are the three stages: at the first, all consecrated to Freedom; at the second, only half; at the third, all grasped by Slavery. The original policy of the Government is absolutely reversed. Slavery, which at the beginning was a sectional institution, with no foothold anywhere on the National Territory, is now exalted as national, and all our broad domain is threatened by its blighting shadow.

Thus much for what I have to say, at this time, of the original policy, consecrated by the lives, opinions, and acts of our fathers. Certain reasons are adduced for the proposed departure from their great example, which, though of little validity, I would not pass in silence.

The Prohibition of Slavery in the Territories is as-

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sailed, as beyond the power of Congress, and an infringement of local sovereignty. On this account, at this late day, it is pronounced unconstitutional. Now, without considering minutely the sources from which the power of Congress over the national domain is derived, — whether from express grant in the Constitution to make rules and regulations for the government of the Territory, or from power, necessarily implied, to govern territory acquired by conquest or purchase, — it seems to me impossible to deny its existence, without invalidating a large portion of the legislation of the country, from the adoption of the Constitution down to the present day. This power was asserted before the Constitution. It was not denied or prohibited by the Constitution itself. Exercised from the first existence of the Government, it has been recognized by the three departments, Executive, Legislative, and Judicial. Precedents of every kind are thick in its support. Indeed, the very bill now before us assumes a control of the Territory clearly inconsistent with those principles of sovereignty which are said to be violated by Congressional prohibition of Slavery.

Here are provisions determining the main features of the Government, the distribution of powers in the Executive, Legislative, and Judicial departments, and the manner in which they shall be respectively constituted, — securing to the President, with the consent of the Senate, the appointment of Governor, Secretary, and Judges, and to the people only the election of the Legislature, — and even ordaining the qualifications of voters, the salaries of the public officers, and the daily compensation of the members of the Legislature. Surely, if Congress may establish these provisions, without inter-

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ference with the rights of territorial sovereignty, it is absurd to say that it may not also prohibit Slavery.

In this very bill there is an express prohibition on the Territory, borrowed from the Ordinance of 1787, and repeated in every Act organizing a Territory, or even a new State, down to the present time, where it is expressly declared that "no tax shall be imposed upon the property of the United States." Now here is a clear and unquestionable restriction upon the Territories and States. The public lands of the United States, situated within an organized Territory or State, cannot be regarded as the *instruments* and *means* necessary and proper to execute the sovereign powers of the nation, like fortifications, arsenals, and navy-yards. They are strictly in the nature of *private property* of the nation, and as such, unless exempted by the foregoing prohibition, would clearly be within the scope of local taxation, liable, like the lands of other proprietors, to all customary burdens and incidents. Mr. Justice Woodbury has declared, in a well-considered judgment, that, "where the United States own land situated within the limits of particular States, and over which they have no cession of jurisdiction, for objects either special or general, little doubt exists that the rights and remedies in relation to it are usually such as apply to other land-owners within the State."[1] I assume, then, that without this prohibition these lands would be liable to taxation. Does any one question this? Nobody. The conclusion, then, follows, that by this prohibition you propose to deprive the present Territory, as you have deprived other Territories, — ay, and States, — of an essential portion of its sovereignty.

[1] United States v. Ames, 1 Woodbury & Minot, 80.

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And these, Sir, are not vain words. The Supreme Court of the United States has given great prominence to the sovereign right of taxation in the States. In the case of *Providence Bank* v. *Billings and Pittman*, 4 Peters, 561, they declare, —

"That the taxing power is of vital importance; *that it is essential to the existence of Government;* that the relinquishment of such a power is never to be assumed."

And again, in the case of *Dobbins* v. *Commissioners of Erie County*, 16 Peters, 447, they say: —

"Taxation is a sacred right, *essential to the existence of Government, an incident of sovereignty.* The right of legislation is coëxtensive with the incident, to attach it upon all persons and property within the jurisdiction of a State."

Now I call upon Senators to remark, that this sacred right, reputed so essential to the very existence of Government, is abridged in the bill before us.

For myself, I do not doubt the power of Congress to fasten this restriction upon the Territory, and afterwards upon the State, as is always done; but I am at a loss to see on what grounds this restriction can be placed, which will not also support the Prohibition of Slavery. The former is an unquestionable infringement of sovereignty, as declared by our Supreme Court, far more than can be asserted of the latter.

I am unwilling to admit, Sir, that the Prohibition of Slavery in the Territories is in any just sense an infringement of local sovereignty. Slavery is an infraction of the immutable Law of Nature, and as such cannot be considered a natural incident to any sovereignty, especially in a country which has solemnly declared, in its Declaration of Independence, the unalienable right of

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all men to life, *liberty*, and the pursuit of happiness. In an age of civilization, and in a land of rights, Slavery may still be tolerated *in fact;* but its prohibition within a municipal jurisdiction by the government thereof — as by one of the States of the Union, — cannot be considered an infraction of natural rights; nor can its prohibition by Congress in the Territories be regarded as an infringement of local sovereignty, founded, as it must be, on natural rights.

Then comes another argument, most fallacious in its character. It is asserted, that, inasmuch as the Territories were acquired by the common treasure, they are the common property of the whole Union, and therefore no citizen can be prevented from carrying into them his slaves, without infringement of the equal rights and privileges which belong to him as a citizen of the United States. But it is admitted that the people of this very Territory, when organized as a State, may exclude slaves, and in this way abridge an asserted right, founded on the common property in the Territory. Now, if this can be done by the few thousand settlers who constitute the State Government, the whole argument founded on the acquisition of the Territories by a common treasure is futile and evanescent.

But this argument proceeds on an assumption which cannot stand. It assumes that Slavery is a National Institution, and that property in slaves is recognized by the Constitution of the United States. Nothing can be more false. By the judgment of the Supreme Court of the United States, and also by the principles of the Common Law, Slavery is a local municipal institution, deriving its support exclusively from local municipal laws, and beyond the sphere of these laws it ceases to exist,

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except so far as it may be preserved by the uncertain clause for the rendition of fugitives from service. Madison thought it wrong to admit in the Constitution the idea that there can be property in men; and I rejoice to believe that no such idea can be found there. The Constitution regards slaves always as "persons," with the rights of "persons," — never as property. When it is said, therefore, that every citizen may enter the national domain with his property, it does not follow, by any rule of logic or of law, that he may carry his slaves. On the contrary, he can carry only that property which is admitted such by the universal Law of Nature, written by God's own finger on the heart of man. In vain do you speak of "rights" in the Territories, — as if this august word could be profaned to characterize such a claim.

The relation of master and slave is sometimes classed with the "domestic relations." Now, while it is unquestionably among the powers of any State, within its own jurisdiction, to change the existing relation of husband and wife, and to establish polygamy, I presume no person would contend that a polygamous husband, resident in one of the States, would be entitled to enter the National Territory with his harem, — his property, if you please, — and there claim immunity. Clearly, when he passes the bounds of that local jurisdiction which sanctions polygamy, the peculiar domestic relation would cease: and it is precisely the same with Slavery.

Sir, I dismiss these considerations. The Prohibition of Slavery in the Territory of Kansas and Nebraska stands on foundations of living rock, upheld by the early policy of the Fathers, by constant precedent, and time-honored compact. It is now in your power to over-

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turn it; you may remove the sacred landmark, and open the whole vast domain to Slavery. To you is committed this high prerogative. Our fathers, on the eve of the Revolution, set forth in burning words, among their grievances, that George the Third, "determined to keep open a market where men should be bought and sold, had prostituted his negative for suppressing every legislative attempt to prohibit or to restrain this execrable commerce."[1] Sir, like the English monarch, you may now prostitute your power to this same purpose. But you cannot escape the judgment of the world, nor the doom of history.

It will be in vain, that, while doing this thing, you plead in apology the principle of *self-government*, which you profess to recognize in the Territories. Sir, this very principle, when truly administered, secures equal rights to all, without distinction of race or color, and makes Slavery impossible. By no rule of justice, and by no subtilty of political metaphysics, can the right to hold a fellow-man in bondage be regarded as essential to self-government. The inconsistency is too flagrant. It is apparent on the bare statement. It is like saying *two* and *two* make *three*. In the name of Liberty you open the door to Slavery. With professions of Equal Rights on the lips, you trample on the rights of Human Nature. With a kiss upon the brow of that fair Territory, you betray it to wretchedness and shame. Well did the patriot soul exclaim, in bitter words, wrung out by bitter experience, "O Liberty, what crimes are committed in thy name!"[2]

In vain, Sir, you will plead that this measure pro-

[1] First Draught of the Declaration of Independence: Jefferson's Writings, Vol. I. p. 23.

[2] "O Liberté, que de crimes on commet en ton nom!" — MME. ROLAND.

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ceeds from the North, as has been suggested by the Senator from Kentucky [Mr. DIXON]. Even if this were true, it would be no apology. But, precipitated upon the Senate, as this bill has been, at a moment of general calm, and in the absence of any controlling exigency, and then hurried to a vote in advance of the public voice, as if fearful of arrest, it cannot justly be called the offspring of any popular sentiment. In this respect it differs widely from the Missouri Prohibition, which was adopted only after solemn debate, extending through two sessions of Congress, and ample discussion before the people. As yet, there is no evidence that this attempt, though espoused by Northern politicians, proceeds from that Northern sentiment which throbs and glows, strong and fresh, in the schools, the churches, and the homes of the people. *Populi omnes* AD AQUILONEM *positi Libertatem quandam spirant.*[1] And could the abomination which you seek to perpetrate be now submitted to the awakened millions whose souls are truly ripened under Northern skies, it would be flouted at once, with indignant and undying scorn.

But the race of men, "white slaves of the North," described and despised by a Southern statesman, is not yet extinct there, Sir. It is one of the melancholy tokens of the power of Slavery, under our political system, and especially through the operations of the National Government, that it loosens and destroys the character of Northern men, exerting its subtle influence even at a distance, — like the black magnetic mountain in the Arabian story, under whose irresistible attraction, the iron bolts which held together the strong timbers of a stately ship, floating securely on the distant wave, were

[1] Bodinus, de Republica, Lib. I. cap. 8, p. 90.

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drawn out, till the whole fell apart, and became a disjointed wreck. Alas! too often those principles which give consistency, individuality, and form to the Northern character, which render it stanch, strong, and seaworthy, which bind it together as with iron, are sucked out, one by one, like the bolts of the ill-fated vessel, and from the miserable loosened fragments is formed that human anomaly, *a Northern man with Southern principles.* Sir, no such man can speak for the North.

[Here there was an interruption of prolonged applause in the galleries.]

THE PRESIDENT (Mr. STUART in the chair). The Chair will be obliged to direct the galleries to be cleared, if order is not preserved. No applause will be allowed.

SEVERAL VOICES. Let them be cleared now.

MR. SUMNER. Mr. President, this bill is proposed as a measure of peace. In this way you vainly think to withdraw the subject of Slavery from National Politics. This is a mistake. Peace depends on mutual confidence. It can never rest secure on broken faith and injustice. Permit me to say, frankly, sincerely, and earnestly, that the subject of Slavery can never be withdrawn from the National Politics until we return once more to the original policy of our fathers, at the first organization of the Government under Washington, when the national ensign nowhere on the National Territory covered a single slave.

. . . . . .

Amidst all seeming discouragements, the great omens are with us. Art, literature, poetry, religion, everything which elevates man, all are on our side. The plough, the steam-engine, the railroad, the telegraph, the book,

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every human improvement, every generous word anywhere, every true pulsation of every heart which is not a mere muscle and nothing else, gives new encouragement to the warfare with Slavery. The discussion will proceed. Wherever an election occurs, there this question will arise. Wherever men come together to speak of public affairs, there again will it be. No political Joshua now, with miraculous power, can stop the sun in its course through the heavens. It is even now rejoicing, like a strong man, to run its race, and will yet send its beams into the most distant plantations, melting the chains of every slave.

But this movement, or agitation, as it is reproachfully called, is boldly pronounced injurious to the very object desired. Now, without entering into details, which neither time nor the occasion justifies, let me say that this objection belongs to those commonplaces which have been arrayed against every good movement in the world's history, against even knowledge itself, against the abolition of the slave-trade. Perhaps it was not unnatural for the Senator from North Carolina [Mr. BADGER] to press it, even as vehemently as he did; but it sounded less natural, when it came, though in more moderate phrase, from my distinguished friend and colleague from Massachusetts [Mr. EVERETT]. The past furnishes a controlling example by which its true character may be determined. Call to mind, Sir, that the efforts of William Wilberforce encountered this precise objection, and that the condition of the kidnapped slave was then vindicated, in language not unlike that of the Senator from North Carolina, by no less a person than the Duke of Clarence, of the royal family of Great Britain. In what was called his maiden speech, on the 3d of May,

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1792, and preserved in the Parliamentary Debates, he said: "The negroes were not treated in the manner which had so much agitated the public mind. He had been an attentive observer of their state, and had no doubt but he could bring forward proofs to convince their Lordships that their state was far from being miserable: on the contrary, that, when the various ranks of society were considered, they were comparatively in a state of humble happiness." And only the next year, this same royal prince, in debate in the House of Lords, asserted that the promoters of the abolition of the slave-trade were "either fanatics or hypocrites," and in one of these classes he ranked Wilberforce. Mark now the end. After years of weary effort, the slave-trade was finally abolished; and at last, in 1833, the early vindicator of this enormity, the maligner of a name hallowed among men, was brought to give his royal assent, as William the Fourth, King of Great Britain, to the immortal Act of Parliament, greater far than any victory of war, by which Slavery was abolished throughout the British dominions. Sir, time and the universal conscience have vindicated the labors of Wilberforce. The movement against American Slavery, protected by the august names of Washington, Franklin, and Jefferson, can calmly await a similar judgment.

Sometimes it is said that this movement is dangerous to the Union. In this solicitude I cannot share. As a lover of concord, and a jealous partisan of all that makes for peace, I am always glad to express my attachment to the Union; but I believe that this bond will be most truly preserved and most beneficently extended (for I shrink from no expansion where Freedom leads the way) by firmly upholding those principles of Liberty

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and Justice which were its early corner-stones. The true danger to this Union proceeds not from any abandonment of the "peculiar institution" of the South, but from the abandonment of the spirit in which the Union was formed, — not from any warfare upon Slavery within the limits of the Constitution, but from warfare upon Freedom, like that waged by this very bill. The Union is most precious; but more precious far are that "general welfare," that "domestic tranquillity," and those "blessings of Liberty" which it was established to secure, — all which are now wantonly endangered. Not that I love the Union less, but Freedom more, do I now, in pleading this great cause, insist that Freedom, at all hazards, shall be preserved.

The great master, Shakespeare, who with all-seeing mortal eye observed mankind, and with immortal pen depicted the manners as they rise, has presented a scene which may be read with advantage by all who would plunge the South into tempestuous quarrel with the North. I refer to the well-known passage between Brutus and Cassius. Reading this remarkable dialogue, it is difficult not to see in Brutus our own North, and in Cassius the South.

"*Cas.* Urge me no more, I shall forget myself;
Have mind upon your health, tempt me no further.

. . . . .

"*Bru.* Hear me, for I will speak.
Must I give way and room to your rash choler?

. . . . .

"*Cas.* O ye gods! ye gods! must I endure all this?
"*Bru.* All this? Ay, more: fret, till your proud heart break:
Go, show your slaves how choleric you are,
And make your bondmen tremble. Must I budge?
Must I observe you? Must I stand and crouch
Under your testy humor?

. . . . .

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"*Cas.* Do not presume too much upon my love;
I may do that I shall be sorry for.
"*Bru.* *You have done that you should be sorry for.*
There is no terror, Cassius, in your threats;
For I am armed so strong in honesty,
That they pass by me as the idle wind,
Which I respect not.
. . . .
"*Cas.* A friend should bear his friend's infirmities,
But Brutus makes mine greater than they are.
"*Bru.* I do not, TILL YOU PRACTISE THEM ON ME.
"*Cas.* You love me not.
"*Bru.* I do not like your faults."

And the colloquy proceeding, each finally comes to understand the other, appreciates his character and attitude, and the impetuous, gallant Cassius exclaims, "Give me your hand!" — to which Brutus replies, "And my heart too!" Afterwards, with hand and heart united, on the field of Philippi they together upheld the liberties of Rome.

The North and the South, Sir, as I fondly trust, amidst all differences, will ever have hand and heart for each other; and believing in the sure prevalence of Almighty Truth, I confidently look forward to the good time, when both will unite, according to the sentiments of the Fathers and the true spirit of the Constitution, in declaring Freedom, and not Slavery, NATIONAL, to the end that the Flag of the Republic, wherever it floats, on sea or land, within the National jurisdiction, may cover none but freemen. Then will be achieved that Union contemplated at the beginning, against which the storms of faction and the assaults of foreign power shall beat in vain, as upon the Rock of Ages, — and LIBERTY, seeking a firm foothold, WILL HAVE AT LAST WHEREON TO STAND AND MOVE THE WORLD.

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WHEN WILL THE NORTH BE AROUSED?

LETTER TO A PERSONAL FRIEND, MARCH 30, 1854.

THE following private letter found its way into the public prints.

SENATE CHAMBER, March 30, 1854.

MY DEAR ——: Your letter has cheered and strengthened me. It came to me, too, with pleasant memories of early life. As I read it, the gates of the Past seemed to open, and I saw again the bright fields of study in which we walked together.

Our battle here has been severe, and much of its brunt has fallen upon a few. For weeks my trials and anxieties were intense. It is a satisfaction to know that they have found sympathy among good men.

But the Slave Power will push its tyranny yet further, and there is but one remedy, — Union at the North without distinction of party, to take possession of the National Government, and administer it in the spirit of Freedom, and not of Slavery. Oh, when will the North be aroused?

Ever sincerely yours,

CHARLES SUMNER.

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A LIBERTY-LOVING EMIGRATION TO GUARD KANSAS.

LETTER TO A MASSACHUSETTS COMMITTEE, MAY 1, 1854.

SENATE CHAMBER, May 1, 1854.

MY DEAR SIR, — I cannot be with you at your meeting on Wednesday next: my post of duty is here. But I must not lose the opportunity afforded by your invitation to express anew my abhorrence of the outrage upon Freedom and public faith attempted by the Nebraska Bill, and to offer my gratitude to those who unite in the good work of opposing it.

In this warfare there is room for every human activity. By speech, vote, public meeting, sermon, and prayer, we have already striven. But a new agent is now announced. It is proposed to organize a company of Liberty-loving citizens, who shall enter upon the broad lands in question, and by example, voice, and vote, trained under the peculiar institutions of Massachusetts, overrule the designs of slave-masters. The purpose has a nobleness which gives assurance of success.

With a heart full of love for Massachusetts, her schools, libraries, churches, and happy homes, I should hesitate to counsel any one to turn away from her, a voluntary exile. I do not venture such advice. But if any there be among us, to whom our goodly Commonwealth seems narrow, and who incline to cast their

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lines in other places, — to such I would say, that they will do well, while becoming, each for himself, the artificer of his fortune, to enter into the Sacred Legion by which Liberty shall be safely guarded in Nebraska and Kansas. Thus will mingle public good with private advantage.

The Pilgrim Fathers turned their backs upon their native land to secure Liberty for themselves and their children. The emigrants whom you organize have a higher motive. Liberty for *themselves* and their children is already secured in Massachusetts. They will go to secure Liberty for *others*, — to guard an immense territory from the invasion of Slavery, and to dedicate it forever to Liberty. In such an expedition volunteers may win a victory of peace, which history will record with admiration and gratitude.

Believe me, dear Sir,
Very faithfully yours,

CHARLES SUMNER.

THOMAS DREW, Esq., Chairman of the Committee.

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FINAL PROTEST, FOR HIMSELF AND THE CLERGY OF NEW ENGLAND, AGAINST SLAVERY IN NEBRASKA AND KANSAS.

SPEECH IN THE SENATE, ON THE NIGHT OF THE FINAL PASSAGE OF THE NEBRASKA AND KANSAS BILL, MAY 25, 1854.

AMONG the important incidents of the Nebraska Debate was a protest from three thousand clergymen of New England, which was severely denounced by the supporters of the aggression, especially by Mr. Douglas. Particular objection was taken to the words, "In the name of Almighty God, and in his presence," which were employed by the protestants. The heats on both sides increased. At a later stage Mr. Sumner felt constrained to speak again, which he did for himself and the much-abused clergy. This brief effort attracted unusual attention. It seemed to meet the rising sentiments of the people, and especially of the clergy. Rev. Dr. Allen, formerly President of Bowdoin College, wrote: "Our *Northampton Courier* of yesterday contained your bold and admirable midnight speech. I thank you for what you said for the clergy, but more especially what you said for the country and for Freedom." Rev. Dr. Storrs, of Braintree, Massachusetts, an eminent Congregationalist, wrote: "I took my pen only to say a single word, — to tell you of my grateful admiration of your courage, faithfulness, and eloquence in defence of truth and godliness against the increasing tide of hellish principles and passions." Rev. Theodore Parker wrote: "I have had no time to thank you for your noble speech till this minute. Nat. Bowditch says it is the best speech delivered in the Senate of the United States in his day. You never did a thing more timely, or which will be more warmly welcomed than this." George S. Hillard, a friend of many years, but differing in position on political questions, wrote: "Your last brief speech on the Nebraska Bill is capital. I think it the best speech you have ever made. The mixture of dignity and spirit is most happy. We are going to fill up that region with free laborers, and secure it against

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Slavery." John G. Whittier wrote: "It was the fitting word; it entirely satisfied me; and with a glow of heart I thanked God that its author was my friend." As the speech received the sympathy of friends, so it aroused all the bad passions on the side of Slavery. The manifestation that ensued will appear in a note at the end.

The original debate in the Senate on the Nebraska and Kansas Bill, in which Mr. Sumner took part, was closed by the passage of that bill — after a protracted session throughout the night — on the morning of Saturday, March 4, 1854, by a vote of thirty-seven yeas to fourteen nays. The bill was then sent to the House of Representatives. It was there taken up and referred to the Committee of the Whole; but, owing to the mass of prior business, it became impossible to reach it. Under these circumstances, a fresh bill, nearly identical with that which passed the Senate, was introduced and passed the House. This, of course, required the action of the Senate. On the 23d of May a message from the House announced its passage, and asked the concurrence of the Senate. It was at once read a first time; but, on the objection of Mr. Sumner, its second reading was stopped for that day. The next day, on motion of Mr. Douglas, all prior orders were postponed for the purpose of considering it. The debate upon it continued during that day and the next. The interest it excited was attested by crowded galleries to the end. Among spectators on the floor of the Senate was the Earl of Elgin, Governor-General of Canada, with his suite, then in Washington to negotiate the Canadian Reciprocity Treaty. Late in the night of the last day, after the bill was reported to the Senate, and the question put by the Chair, "Shall the bill be engrossed and read a third time?" Mr. Sumner took the floor and said: —

MR. PRESIDENT, — It is now midnight. At this late hour of a session drawn out to unaccustomed length, I shall not fatigue the Senate by argument. There is a time for all things, and the time for argument has passed. The determination of the majority is fixed; but it is not more fixed than mine. The bill which they sustain I oppose. On a former occasion I met it by argument, which, though often attacked in debate, still stands unanswered and unanswerable. At present I am admonished that I must be content with a few words of earnest protest against the

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consummation of a great wrong. Duty to myself, and also to the honored Commonwealth of which I find myself the sole representative in this immediate exigency, will not allow me to do less.

But I have a special duty, which I would not omit. Here on my desk are remonstances against the passage of this bill, some placed in my hands since the commencement of the debate to-day, and I desire that these voices, direct from the people, should be heard. With the permission of the Senate, I will offer them now.

THE PRESIDING OFFICER (Mr. STUART in the chair). The remonstrances can be received by unanimous consent.

SEVERAL VOICES. Let them be received.

THE PRESIDING OFFICER. The Chair hears no objection.

MR. SUMNER. Taking advantage of this permission, I now present the remonstrance of a large number of citizens of New York against the repeal of the Missouri Compromise.

I also present the memorial of the religious Society of Friends in Michigan against the passage of the Nebraska Bill, or any other bill annulling the Missouri Compromise Act of 1820.

I also present the remonstrance of the clergy and laity of the Baptist denomination in Michigan and Indiana against the wrong and bad faith contemplated in the Nebraska Bill.

But this is not all. I hold in my hand, and now present to the Senate, one hundred and twenty-five separate remonstrances, from clergymen of every Protestant denomination in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut, constituting the six New England States. These remonstrances are

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identical in character with the larger one presented by my distinguished colleague [Mr. EVERETT], — whose term of service here ends in a few days by voluntary resignation, and who is now detained at home by illness, — and were originally intended as part of it, but did not arrive in season for annexation to that interesting and weighty document. They are independent in form, though supplementary in nature, helping to swell the protest of the pulpits of New England.

With pleasure and pride I now do this service, and at this last stage interpose the sanctity of the pulpits of New England to arrest an alarming outrage, — believing that the remonstrants, from their eminent character and influence as representatives of the intelligence and conscience of the country, are peculiarly entitled to be heard, — and, further, believing that their remonstrances, while respectful in form, embody just conclusions, both of opinion and fact. Like them, Sir, I do not hesitate to protest against the bill yet pending before the Senate, as a great moral wrong, as a breach of public faith, as a measure full of danger to the peace, and even existence, of our Union. And, Sir, believing in God, as I profoundly do, I cannot doubt that the opening of an immense region to so great an enormity as Slavery is calculated to draw down upon our country his righteous judgments.

"In the name of Almighty God, and in his presence," these remonstrants protest against the Nebraska Bill. In this solemn language, most strangely pronounced blasphemous on this floor, there is obviously no assumption of ecclesiastical power, as is perversely charged, but simply a devout observance of the Scriptural injunction, "Whatsoever ye do, in word or deed, do all in the name

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of the Lord." Let me add, also, that these remonstrants, in this very language, have followed the example of the Senate, which, at our present session, has ratified at least one important treaty beginning with these precise words, "In the name of Almighty God." Surely, if the Senate may thus assume to speak, the clergy may do likewise, without imputation of blasphemy, or any just criticism, at least in this body.

I am unwilling, particularly at this time, to be betrayed into anything like a defence of the clergy. They need no such thing at my hands. There are men in this Senate justly eminent for eloquence, learning, and ability; but there is no man here competent, except in his own conceit, to sit in judgment on the clergy of New England. Honorable Senators, so swift with criticism and sarcasm, might profit by their example. Perhaps the Senator from South Carolina [Mr. BUTLER], who is not insensible to scholarship, might learn from them something of its graces. Perhaps the Senator from Virginia [Mr. MASON], who finds no sanction under the Constitution for any remonstrance from clergymen, might learn from them something of the privileges of an American citizen. And perhaps the Senator from Illinois [Mr. DOUGLAS], who precipitated this odious measure upon the country, might learn from them something of political wisdom. Sir, from the first settlement of these shores, from those early days of struggle and privation, through the trials of the Revolution, the clergy are associated not only with the piety and the learning, but with the liberties of the country. New England for a long time was governed by their prayers more than by any acts of the Legislature; and at a later day their voices aided even the Declaration of Independence. The clergy of our

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time speak, then, not only from their own virtues, but from echoes yet surviving in the pulpits of their fathers.

For myself, I desire to thank them for their generous interposition. Already they have done much good in moving the country. They will not be idle. In the days of the Revolution, John Adams, yearning for Independence, said, "Let the pulpits thunder against oppression!" And the pulpits thundered.[1] The time has come for them to thunder again. So famous was John Knox for power in prayer, that Queen Mary used to say she feared his prayers more than all the armies of Europe. But our clergy have prayers to be feared by the upholders of wrong.

There are lessons taught by these remonstrances, which, at this moment, should not pass unheeded. The Senator from Ohio [Mr. WADE], on the other side of the chamber, has openly declared that Northern Whigs can never again combine with their Southern brethren in support of Slavery. This is a good augury. The clergy of New England, some of whom, forgetful of the traditions of other days, once made their pulpits vocal for the Fugitive Slave Bill, now, by the voices of learned divines, eminent bishops, accomplished professors, and faithful pastors, uttered in solemn remonstrance, unite at last in putting a permanent brand upon this hateful wrong. Surely, from this time forward, they can never more render it any support. Thank God for this! Here is a sign full of promise for Freedom.

These remonstrances have especial significance, when

[1] A specimen is an address by Rev. Thomas Allen, Minister of Pittsfield, Mass., entitled "Instruction and Counsel of a Country Clergyman, given to his People, Lord's Day, June 20, 1779, immediately after reading [to them] the Address of the Honorable Congress to the Inhabitants of these United States." See Boston Independent Chronicle, July 15, 1779.

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it is urged, as has been often done in this debate, that the proposition still pending proceeds from the North. Yes, Sir, proceeds from the North: for that is its excuse and apology. The ostrich is reputed to hide its head in the sand, and then vainly imagine its coward body beyond the reach of pursuers. In similar spirit, honorable Senators seem to shelter themselves behind scanty Northern votes, and then vainly imagine that they are protected from the judgment of the country. The pulpits of New England, representing in unprecedented extent the popular voice there, now proclaim that six States, with all the fervor of religious conviction, protest against your outrage. To this extent, at least, I maintain it does not come from the North.

From these expressions, and other tokens which daily greet us, it is evident that at last the religious sentiment of the country is touched, and, through this sentiment, I rejoice to believe that the whole North will be quickened with the true life of Freedom. Sir Philip Sidney, speaking to Queen Elizabeth of the spirit in the Netherlands, animating every man, woman, and child against the Spanish power, exclaimed, "It is the spirit of the Lord, and is irresistible." A kindred spirit now animates the Free States against the Slave Power, breathing everywhere its involuntary inspiration, and forbidding repose under the attempted usurpation. It is the spirit of the Lord, and is irresistible. The threat of disunion, too often sounded in our ears, will be disregarded by an aroused and indignant people. Ah, Sir, Senators vainly expect peace. Not in this way can peace come. In passing such a bill as is now threatened, you scatter, from this dark midnight hour, no seeds of harmony and good-will, but, broadcast through the land, dragons' teeth, which haply

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may not spring up in direful crops of armed men, yet, I am assured, Sir, will fructify in civil strife and feud.

From the depths of my soul, as loyal citizen and as Senator, I plead, remonstrate, protest, against the passage of this bill. I struggle against it as against death; but, as in death itself corruption puts on incorruption, and this mortal body puts on immortality, so from the sting of this hour I find assurance of that triumph by which Freedom will be restored to her immortal birthright in the Republic.

Sir, the bill you are about to pass is at once the worst and the best on which Congress ever acted. Yes, Sir, WORST and BEST at the same time.

It is the worst bill, inasmuch as it is a present victory of Slavery. In a Christian land, and in an age of civilization, a time-honored statute of Freedom is struck down, opening the way to all the countless woes and wrongs of human bondage. Among the crimes of history, another is soon to be recorded, which no tears can blot out, and which in better days will be read with universal shame. Do not start. The Tea Tax and Stamp Act, which aroused the patriot rage of our fathers, were virtues by the side of your transgression; nor would it be easy to imagine, at this day, any measure which more openly and wantonly defied every sentiment of justice, humanity, and Christianity. Am I not right, then, in calling it the worst bill on which Congress ever acted?

There is another side, to which I gladly turn. Sir, it is the best bill on which Congress ever acted; *for it annuls all past compromises with Slavery, and makes any future compromises impossible.* Thus it puts Freedom and Slavery face to face, and bids them grapple. Who can doubt the result? It opens wide the door of the

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Future, when, at last, there will really be a North, and the Slave Power will be broken, — when this wretched Despotism will cease to dominate over our Government, no longer impressing itself upon everything at home and abroad, — when the National Government will be divorced in every way from Slavery, and, according to the true intention of our fathers, Freedom will be established by Congress everywhere, at least beyond the local limits of the States.

Slavery will then be driven from usurped foothold here in the District of Columbia, in the National Territories, and elsewhere beneath the national flag; the Fugitive Slave Bill, as vile as it is unconstitutional, will become a dead letter; and the domestic Slave-Trade, so far as it can be reached, but especially on the high seas, will be blasted by Congressional Prohibition. Everywhere within the sphere of Congress, the great *Northern Hammer* will descend to smite the wrong; and the irresistible cry will break forth, "No more Slave States!"

Thus, Sir, standing at the very grave of Freedom in Nebraska and Kansas, I lift myself to the vision of that happy resurrection by which Freedom will be assured, not only in these Territories, but everywhere under the National Government. More clearly than ever before, I now penetrate that great Future when Slavery must disappear. Proudly I discern the flag of my country, as it ripples in every breeze, at last in reality, as in name, the Flag of Freedom, — undoubted, pure, and irresistible. Am I not right, then, in calling this bill the best on which Congress ever acted?

Sorrowfully I bend before the wrong you commit. Joyfully I welcome the promises of the Future.

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When Mr. Sumner took his seat, he was succeeded by Mr. MASON, of Virginia, who spoke as follows.

I understand that the petitions which the Senator [Mr. SUMNER] who has just taken his seat offers were to be admitted, as they were offered, by the unanimous consent of the Senate. Two of them, when offered, were sent to the President's table. The last he has reserved, and made the vehicle for communicating the sentiments of the pulpits of New England to the Senate, on the subject of this bill. I object to its reception; and I object to it because I understand that Senator to say that it is *verbatim* the petition that was presented by his honorable colleague, who is not now with us, in which the clergy presented themselves in this Senate and to the country as a third estate, speaking not as American citizens, but as clergymen, and in that character only. I object to its reception. I object to it, that I may not in any manner minister to the unchristian purposes of the clergy of New England, as the Senator has just announced them. I object to it, that I may be in no manner responsible for the prostitution of their office (once called holy and sacred, with them no longer so) in the face of the Senate and of the American people. I object to it, that the clergymen of my own honored State, and of the South, may, as holding a common office in the ministry of the Gospel, be in no manner confounded with or contaminated by these clergymen of New England, if the Senator represents them correctly.

Sir, if the Senator has represented these clergymen correctly, I rejoice that there is to be a separation between the Church North and the Church South; for, I say, if these men dare to lay aside the character of American citizens, and come here profaning their office, profaning the name of the Almighty, for the purpose of political alliances, they are unworthy of their associates in the Church. Sir, it is the first time in the history of this country that a Church of

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any denomination has asserted a right to be heard, as a Church, upon the floors of legislation; and if the Senator represents that body correctly, they have profaned their office, and I predict now a total separation between the Church North and the Church South, if I understand the sentiments of the Church South. The Church there, I know, is yet pure in its great and holy mission. When its ministers address themselves from the pulpit, they are heard with respect, under the sanctity of their office. You find none of them coming here to the doors of legislation to mingle in political strife. They truly hold themselves "unspotted from the world."

If the Senator who has just taken his seat has correctly expounded the clergymen of New England, I object to that petition. If he has correctly stated that it is *verbatim* copied from the petition presented by his colleague, I say it is a prostitution of their office to the embrace of political party; and the Senate shall not, by my assent, be made the medium of so unholy an alliance. I do not mean to go further into this debate; but I object to the reception of the petition.

THE PRESIDING OFFICER. The petitions cannot be received without unanimous consent.

MR. SUMNER. It may be, Sir, at this moment, within the competency of the honorable Senator from Virginia to object to the reception of these remonstrances; but I am satisfied that at another time his calmer judgment will not approve this course, much less the ground on which now, as well as on a former occasion, he has undertaken to impeach the right of clergymen to appear by petition or remonstrance at the bar of Congress. Sir, in refusing to receive these remonstrances, or in neglecting them in any way, on reasons assigned in this

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chamber, you treat them with an indignity which becomes more marked, because it is the constant habit of the Senate to welcome remonstrances from members of the Society of Friends in their religious character, and from all other persons, by any designation which they may adopt. Booksellers remonstrate against the international copyright treaty; last-makers against a proposed change in the patent laws; and only lately the tobacconists have remonstrated against certain regulations touching tobacco: and all these remonstrances are received with respect, and referred to appropriate committees in the Senate. But the clergy of New England, when protesting against a wicked measure, which, with singular unanimity, they believe full of peril and shame to our country, are told to stay at home. Almost the jeer is heard, "Go up, thou bald head!" If not well, it is at least natural, that the act you are about to commit should be attended by this concordant outrage.

From the Kansas and Nebraska Bill came forth a demon. Down to this time the hostility to Mr. Sumner in the Senate was limited. It now became more general, although he had said nothing in any way to justify it, except that he had exposed Slavery and the pretensions in its behalf. From the Senate it extended among the partisans of Slavery.

Meanwhile an incident in Boston was used to arouse a feeling against him. On the evening of the 24th of May Anthony Burns was seized there as a fugitive slave, on the claim of a citizen of Virginia, and detained by the marshal in a room of the Court-House. In the course of the evening of the 26th, immediately after a meeting at Faneuil Hall, addressed by Abolitionists, the Court-House was attacked by a number of citizens, and in the defence, James Batchelder, one of the guard, was killed. The report of his death caused a great sensation at Washington. It was received while the impression of Mr. Sumner's midnight speech was still fresh, and was at once attributed to that effort. Mr. Sumner was treated as responsible for this act, and the official organs of the Ad-

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ministration openly denounced him as "murderer." It was predicted in the speech that the bill would "scatter dragons' teeth," which he was assured would "fructify in civil strife and feud"; but plainly there was nothing to suggest or excite violence, even if at the time the speech had been known in Boston, as it was not. It was concluded on the morning of the 26th of May, at too late an hour for the telegraph, and in fact was not known in Boston until it reached there by mail on the 27th; but Batchelder was killed on the previous evening. And yet, in the face of these unquestionable facts, there was a cry against Mr. Sumner.

The *Union*, which was the official organ, thus broke forth on the morning of May 30th.

"Boston in arms against the Constitution, and an Abolition fanatic, the distant leader, safe from the fire and the fagot he invokes from his seat in the Senate of the United States, *giving the command.* Men shot down in the faithful discharge of duty to a law based upon a constitutional guaranty, and *the word which encourages the assassin* given by a man who has sworn on the Holy Evangelists and in the presence of his Maker to support the Constitution of the country. But our Charles Sumner tells us that a new era has been inaugurated, ... that the Constitution shall not be obeyed, and that Slavery shall at all and every hazard be uprooted and destroyed, in spite of all that has been pledged and written in other days."

The *Star*, another organ of the Administration, repeated the imputations of the *Union*, in a long article, of which the following is a specimen.

"If Southern gentlemen are threatened and assaulted, while legally seeking to obtain possession of property for the use of which they have a solemn constitutional guaranty, if legal rights can only be sought for and established at the bayonet's point, *certain Northern men now in our midst* will have to evince a little more circumspection than they have ever evinced in their walk, talk, and acts.

"Public sentiment in Alexandria is intensely excited in condemnation of Sumner and his allies. We know that it increases in this city every hour. The masses look upon Sumner as responsible for the death of Batchelder. They attribute, and justly, the action of the murderers to the counsel of Sumner. We hope that the public sentiment against these Abolition miscreants who infest Congress and our fair city, and fill the atmosphere in which they move with the odor of a brothel, will not descend to acts of personal violence. Such conduct can find no justification. But let public opinion condemn these men everywhere, — in the street, in the Capitol, in every place where men meet. *Let Sumner and his infamous gang* feel that he cannot outrage the fame of his country, counsel treason to its laws, incite the ignorant to bloodshed and murder, and still receive the support and countenance of the society of this city, which he has done so much to vilify.

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"While the person of a Virginia citizen is only safe from rudeness and outrage behind the serried ranks of armed men, Charles Sumner is permitted to walk among the 'slave-catchers' and 'fire-eaters' of the South in peace and security. While he incites his constituents to resist the Federal laws *even to the shedding of blood*, concocts his traitorous plots, and sends forth his incendiary appeals under the broad protecting panoply of the laws he denounces, he retains his seat in the Senate, and yet daily violates the official oath which he took to support the Constitution of the United States."

Such articles were plainly intended to excite a mob against Mr. Sumner. The conspiracy obtained headway in Alexandria. One proposition was, to seize him as hostage for the surrender of the fugitive slave whose case was then pending in Boston; another was, to inflict upon him personal indignity and violence; another was, "to put a ball through his head." These menaces were communicated to him, and he was warned to leave Washington. This he refused to do, and he insisted upon walking to the Senate by Pennsylvania Avenue, always unarmed. At a restaurant, where he dined, he was directly menaced and insulted. The following telegram in the New York *Times*, under date of May 31, states the case briefly.

"A strenuous and systematized effort is making here and in Alexandria to raise a mob against Senator Sumner, in retaliation for the Boston difficulty. . . . . The *Star* of this evening has two articles, the incendiary purpose of which cannot be mistaken. Senator Sumner himself has been several times warned to-day of personal danger, and assured that persons bearing close relation to the Administration are inciting the people to violence against him. Northern men are much excited in consequence, and if an outrage is committed, there is a probability that there will be serious trouble."

The same telegram was sent to other places. Throughout New England it excited great sensation, attested at once by the public press and by private letters. The following was received by Mr. Sumner, under date of May 31, from Joseph R. Hawley, of Connecticut, afterwards a general in the War, and Governor of Connecticut.

"If you really think there is any danger worth mentioning, I wish you would telegraph me instantly. I will come to Washington by the next train, and quietly *stay by*. I have revolvers, and can use them, — and while there should not be a word of unnecessary provocation, still, if anybody in Alexandria or Washington *really* means to trouble you, or any other Free Democrat there, you know several can play at that game. I feel comparatively little anxiety as to the result in Boston. Let them hunt slaves till the people get sick of it. But such threats as are conveyed by that despatch should be quietly prepared for, and met as they deserve."

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George Livermore, of Boston, gave expression to the same anxiety in a different form. He wrote thus, under date of June 3.

"There is but one feeling here respecting the infamous threats of the *Union* and *Star*. *Let the minions of the Administration and of the Slavocracy harm one hair of your head, and they will raise a whirlwind that will sweep them to destruction.* I have read your closing remarks on the Nebraska Bill with the greatest admiration, and most heartily indorse every word and sentiment. You never made a better speech. What higher praise could I offer? Many persons not of the Free-Soil party have spoken of it in terms of the highest commendation."

The violence was postponed; but the malignant spirit continued active.

Beyond the sentiment of indignation at the menaces to which Mr. Sumner was exposed arose another against Slavery. Persons who had been cold or lukewarm before were excited now. Here again contemporary newspapers and private letters testify. John B. Alley, for several years afterwards the representative from Essex, wrote thus, under date of June 5.

"The most eventful week that Boston has ever seen has just passed, and I cannot refrain from troubling you with a description of the state of feeling here. In the first place, allow me to congratulate you upon the glorious position you occupy in the hearts of the people of Boston. Praises from the lips of the most ultra Hunker Whigs have greeted my ears (I need not tell you with how much pleasure) during the past week.

"Boston, it is true, has been humbled in the dust, and it is hard, terribly hard, to be compelled to witness the surrender of a panting fugitive into the hands of the Slave-Hunters; but never, since I have been engaged in the Antislavery cause, have I seen occasion for rejoicing as now.

"Thank God, the chains that have bound the people to their old organizations have been snapped asunder, and they have proved in this case but as packthreads upon the arms of an unshorn Samson. . . . . Your speech in defence of the clergy is noble, and wonderfully effective, apparently, in stirring up their sympathies for the slave."

Numerous letters describe the surrender to which Mr. Alley alludes. The following from R. H. Dana, Jr., under date of June 5, gives details.

"Judging from present appearances, there are few Compromise men left in Boston. I firmly believe that in the providence of God it has been decreed that one cup more should be put to our lips, and that it should not pass away until we had drained it to the dregs. To this end, a folly has been put in their counsel and a madness in their hearts, that they might do the things that should work in the end the utmost good. The delays, the doubts as to the propriety of the decision (more than doubts even with the

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moderate), the military indignities and violence, the noonday procession, the refusal to sell, the Presidential intervention, all have tended to the desired effect. Poor Burns himself looked with terror to a renewal of slavery. Not that Colonel Suttle was cruel. He has never lived with Suttle, but he is intelligent, reads and writes, is weak in his injured head, and therefore of little value, and liable to be sold and abused.

"Batchelder was not a deputy-marshal. He is only a man who has volunteered, this third time, against advice, to help catch and keep a fugitive slave. You observe the marshal only calls him one of his 'guards.' This guard were a precious set of murderers, thieves, bullies, blacklegs, — with a very few men who went into it from party bias, old Hunker Democratic truckmen. Batchelder was a truckman, I am told, and may be personally respectable for aught I know. I can give you no advice as to the pension. They ought to know what Batchelder was. It seems to me unconstitutional and unprecedented. If it can be defeated without your stir, it would be better, no doubt. I do not find there is any feeling for his case here. He volunteered for the duty, and met the consequences. He voluntarily risked his life for pay, in an odious and dangerous business, and lost it."

George Livermore, always a decided Whig, who had written under date of June 3, wrote again, under date of June 13: —

"I am, as I always have been, a Conservative Whig, but I am ready to fraternize with *anybody who will do the most for Freedom*; and if one who has heretofore been called a Democrat or a Free-Soiler will do more for this cause than a candidate who has been called a Whig, he shall have my vote, and my hearty coöperation in every way in my power."

A merchant of Boston wrote at the same time: —

"I rejoice that a man of your sympathies and sensibilities is not here to see the Court-House again in chains, and justice administered behind bayonets. The only retaliation at present proposed is a petition to repeal the Fugitive Slave Act, now in the News-Room, on its second day, with several thousand names attached. But what is the use of petition, or polished sentences and rounded periods, in a contest with the pirate honor of Slavery? It is like an attempt to hew down a mountain of granite with a glass pickaxe."

The sentiments of the people, and particularly of the clergy, are sketched by Rev. George C. Beckwith, Secretary of the Peace Society, in a letter dated June 2, from which an extract is given.

"You will have learned ere this that the deed is done, — the deed of shame and degradation to our good old State. I witnessed the scene from an insurance office on State Street, and never before felt such a sense of degradation. I am glad that so many seemed to share it with me: for I observed a sort of funereal sadness on the vast masses before and around me. There were groans and hisses at even our own troops, the militia, that had come

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[illegible] every effort to get up any counter [illegible]

[illegible] another purpose, as you will see from the [illegible] public proceedings. I wish to say a word about [illegible] friends, whom you have [illegible] with so much [illegible] speech before the Senate. They met yes- [illegible] without notice, to the number of some four or [illegible] on this subject. I never attended a meeting that [illegible] a greater amount of moral power. Little or [illegible] surface, but a depth of feeling, a calmness of con- [illegible] and an energy of purpose, from which, I am well satisfied, the whole country will hear in due time.

. . . . . .

"I think I am still true to my peace principles, but my heart is stirred to its lowest depths of indignation; and I say frankly to men who applaud what our forefathers did, that we have now even stronger reasons for resistance to the Slave Power than they had to the usurpations of England."

Thomas Sherwin, late head-master of the Boston High School, and once a tutor of Mr. Sumner at Harvard University, wrote as follows.

"You, Sir, in my opinion, command the highest respect from the people, not only of Massachusetts, but of the entire Union. To yourself, Chase, Giddings, Smith, Benton, and a few others, the great majority of our people look for protection against the machinations of politicians who would bring upon our country the contempt of the civilized world, and upon the Government the execration of unborn millions."

These extracts prepare the way for the next scene in the drama.

UNION OF ALL PARTIES NECESSARY AGAINST THE SLAVE POWER.

LETTER TO A MASSACHUSETTS COMMITTEE, MAY 29, 1854.

SENATE CHAMBER, May 29, 1854.

GENTLEMEN, — For the present my post of duty is here, so that I must forego the pleasure of meeting our friends on Wednesday next. The Massachusetts host, I am glad to learn, will be reinforced on that occasion by brave voices from other States. Mr. Giddings you will be glad to welcome.

Could I meet my fellow-citizens, I should not lose the opportunity of sounding the alarm and exhorting them to action. The Nebraska Bill has passed, but it is a mistake to suppose that the propagandists of Slavery will stop here. Other audacities are at hand. More land from Mexico is sought, on which to extend a nefarious institution. The calamities of war with Spain, incalculably disastrous to the commerce of New York and Boston, are all to be braved in order to appropriate slave-holding Cuba. An intrigue is now pending to secure a foothold in Hayti; and even the distant valley of the Amazon is embraced in these gigantic schemes, by which the despotism of the Slave Power is to be established, while you and I, and all of us from the North, are to bow down before it. For myself, I will not bow down; but, Gentlemen, you will understand that no individual can effectually oppose these schemes.

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This can be done only in one way. As all at the South, without distinction of party, unite for Slavery, so all at the North, without distinction of party, forgetting vain differences of Whig and Democrat, must unite for Freedom, and, rising in majority and might, take control of the National Government. For this work the people are now ready; and they can surely accomplish it, if they will. The only impediment, at this moment, is to be found in those blind or selfish politicians who perversely seek a triumph of mere party, instead of a triumph of Freedom. Neither the Whig party nor the Democratic party, through its national organization dependent on slaveholding wings, is competent to the exigency. The slaveholding wings can be kept in concert with the Northern wings only when they give the law to the movement. For a poor triumph of party, the North yields, in advance, all that is dear to it, and, while vainly calling itself *national*, helps to instal the *sectional* power of Slavery in the National Government. This must be changed.

With an earnest soul, devoted to the triumph of the righteous cause, and indifferent to the name by which I may be called, I would say to all at this time, Abandon old party ties; forget old party names; let by-gones be by-gones; and for the sake of Liberty, and to secure the general welfare, now unite against the Despotism of Slavery, and in this union let past differences disappear.

Believe me, Gentlemen,
Very faithfully yours,

CHARLES SUMNER.

HON. F W BIRD, JAMES M. STONE, Committee.

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THE BOSTON PETITION FOR THE REPEAL OF THE FUGITIVE SLAVE ACT.

SPEECH IN THE SENATE, ON THE BOSTON PETITION FOR THE REPEAL OF THE FUGITIVE SLAVE ACT, JUNE 26, 1854.

THE midnight speech of Mr. Sumner on the Kansas and Nebraska Bill contained language which was soon justified. In pronouncing the bill "the best on which Congress ever acted," he said that it annulled all past compromises with Slavery, and "thus it puts Freedom and Slavery face to face, and bids them grapple." And this was the case in Boston, immediately after the passage of the bill, when a fugitive slave was surrendered. The indignation was general, and a petition for the repeal of the Fugitive Slave Act was extensively signed, in the following terms.

"To the Honorable the Senate and House of Representatives in Congress assembled: The undersigned, men of Massachusetts, ask for the repeal of the Act of Congress of 1850 known as the FUGITIVE SLAVE BILL"

There were twenty-nine hundred petitioners, among whom were many who had heretofore sustained this atrocious measure; but they felt at last relieved from this service. In this respect this petition marks an epoch in public sentiment.

Its reception in the Senate marks an epoch there. It was presented on the 22d of June, by Mr. Rockwell, the new Senator in Mr. Everett's place, who moved its reference to the Committee on the Judiciary. Other petitions of like character had been treated very unceremoniously. This was debated at length, and finally referred according to the motion of Mr. Rockwell.

On the 26th of June the debate began, in which Mr. Jones, of Tennessee, Mr. Rockwell, of Massachusetts, then again Mr. Jones, and Mr. Brodhead, of Pennsylvania, took part. At this stage Mr. Sumner spoke as follows.

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MR. PRESIDENT, — I begin by answering the interrogatory propounded by the Senator from Tennessee [Mr. JONES]: "Can any one suppose, that, if the Fugitive Slave Act be repealed, this Union can exist?" To which I reply at once, that, if the Union be in any way dependent on an act — I cannot call it a *law* — so revolting in every aspect as that to which he refers, then it ought not to exist. To much else that has fallen from that Senator I do not desire to reply. Matters already handled again and again, in the long-drawn-out debates of this session, he has discussed at length. Like the excited hero of Macedonia, he has renewed past conflicts, —

"And thrice he routed all his foes, and thrice he slew the slain."

Of what the Senator said on the relations of Senators, North and South, of a particular party, it is not my province to speak. And yet I do not turn from it without expressing at least some confidence that men from the North, whether Whigs or Democrats, will neither be cajoled by any temptation nor driven by any lash from the support of those principles which are inseparable from the true honor and welfare of the country. At last there will be, I trust, a backbone in the North.

My colleague has already remarked that this petition proceeds from persons many of whom were open supporters of the alleged Compromises of 1850, including even the odious Fugitive Slave Act. I have looked over the long list, and, so far as I can judge, find this to be true. And, in my opinion, the change shown by these men is typical of the change in the community of which they constitute a prominent part. Once the positive

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upholders of the Fugitive Slave Act, they now demand its unconditional repeal.

There is another circumstance worthy of especial remark. This petition proceeds mainly from persons connected with trade and commerce. Now it is a fact too well known in the history of England, and of our own country, that these persons, while often justly distinguished by individual charities, have been lukewarm in opposition to Slavery. Twice in English history did "the mercantile interest" frown upon endeavors to suppress the atrocity of Algerine Slavery; steadfastly in England it sought to baffle Wilberforce's great effort for the abolition of the African slave-trade; and at the formation of our own Constitution, it stipulated a sordid compromise, by which this same detested, Heaven-defying traffic was saved for twenty years from American judgment. But now it is all changed,—at least in Boston. Representatives of "the mercantile interest" place themselves in the front of the new movement against Slavery, and, by their explicit memorial, call for the removal of a grievance which they have bitterly felt in Boston.

Mr. President, this petition is interesting to me, first, as it asks a repeal of the Fugitive Slave Act, and, secondly, as it comes from Massachusetts. That repeal I shall be glad, at any time, now and hereafter, as in times past, to sustain by vote and argument; and I trust never to fail in any just regard for the sentiments or interests of Massachusetts. With these few remarks I would gladly close. But there has been an arraignment, here to-day, both of myself and of the Commonwealth which I represent. To all that has been said of myself or the Commonwealth, so far as it is impeachment of either, so far as it subjects either to any real censure, I plead

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openly, for myself and for Massachusetts, "Not guilty." But pardon me, if I do not submit to be tried by the Senate, fresh from the injustice of the Nebraska Bill. In the language of the Common Law, I put myself upon "God and the country," and claim the same trial for my honored Commonwealth.

So far as the arraignment touches me personally, I hardly care to speak. It is true that I have not hesitated, here and elsewhere, to express my open, sincere, and unequivocal condemnation of the Fugitive Slave Act. I have denounced it as at once a violation of the law of God, and of the Constitution of the United States; and I now repeat this denunciation.

Its violation of the Constitution is manifold; and here I repeat but what I have often said. Too often it cannot be set forth, so long as the infamous statute blackens the land.

It commits the great question of human freedom, — than which none is more sacred in the law, — not to a solemn trial, but to summary proceedings.

It commits this great question, not to one of the high tribunals of the land, but to the unaided judgment of a single petty magistrate.

It commits this great question to a magistrate appointed, not by the President with the consent of the Senate, but by the Court, — holding his office, not during good behavior, but merely during the will of the Court, — and receiving, not a regular salary, but fees according to each individual case.

It authorizes judgment on *ex parte* evidence, by affidavit, without the sanction of cross-examination.

It denies the writ of *habeas corpus*, ever known as the palladium of the citizen.

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Contrary to the declared purposes of the framers of the Constitution, it sends the fugitive back "at the public expense."[1]

Adding meanness to the violation of the Constitution, it bribes the Commissioner by a double fee to pronounce against Freedom. If he dooms a man to Slavery, the reward is ten dollars; but saving him to Freedom, his dole is five dollars.

This is enough, but not all. On two other capital grounds do I oppose the Act as unconstitutional: first, as it is an assumption by Congress of powers not delegated by the Constitution, and in derogation of the rights of the States; and, secondly, as it takes away that essential birthright of the citizen, trial by jury, in a question of personal liberty and a suit at Common Law. Thus obnoxious, I have always regarded it as an enactment totally devoid of all constitutional, as it is clearly devoid of all moral obligation, while it is disgraceful to the country and the age. And, Sir, I have hoped and labored for the creation of such a Public Opinion, firm, enlightened, and generous, as should render this Act practically inoperative, and should press, without ceasing, upon Congress for its repeal. For all that I have thus uttered I have no regret or apology, but rather joy and satisfaction. Glad I am in having said it; glad I am now in the opportunity of affirming it all anew. Thus much for myself.

In response for Massachusetts, there are other things. Something surely must be pardoned to her history. In Massachusetts stands Boston. In Boston stands Faneuil Hall, where, throughout the perils which preceded the Revolution, our patriot fathers assembled to vow them-

[1] See Madison's Debates, August 28, 1787.

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selves to Freedom. Here, in those days, spoke James Otis, full of the thought that "the people's safety is the law of God."[1] Here, also, spoke Joseph Warren, inspired by the sentiment that "death with all its tortures is preferable to Slavery."[2] And here, also, thundered John Adams, fervid with the conviction that "consenting to Slavery is a sacrilegious breach of trust."[3] Not far from this venerable hall — between this Temple of Freedom and the very court-house to which the Senator [Mr. JONES] has referred — is the street where, in 1770, the first blood was spilt in conflict between British troops and American citizens, and among the victims was one of that African race which you so much despise. Almost within sight is Bunker Hill; further off, Lexington and Concord. Amidst these scenes a Slave-Hunter from Virginia appears, and the disgusting rites begin by which a fellow-man is sacrificed. Sir, can you wonder that our people are moved?

> "Who can be wise, amazed, temperate and furious,
> Loyal and neutral, in a moment? *No man.*"

It is true that the Slave Act was with difficulty executed, and that one of its servants perished in the madness. On these grounds the Senator from Tennessee charges Boston with fanaticism. I express no opinion on the conduct of individuals; but I do say, that the fanaticism which the Senator condemns is not new in Boston. It is the same which opposed the execution of the Stamp Act, and finally secured its repeal. It is the same which opposed the Tea Tax. It is the fanaticism which finally triumphed on Bunker Hill. The

[1] Rights of the British Colonies (Boston, 1764), p. 10.

[2] Letter to Edmund Dana, March 19, 1766: Loring's Hundred Boston Orators, 2d ed., p. 51.

[3] Dissertation on the Canon and Feudal Law: Works, Vol. III. p. 463.

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Senator says that Boston is filled with traitors. That charge is not new. Boston of old was the home of Hancock and Adams. Her traitors now are those who are truly animated by the spirit of the American Revolution. In condemning them, in condemning Massachusetts, in condemning these remonstrants, you simply give proper conclusion to the utterance on this floor, that the Declaration of Independence is "a self-evident lie."

Here I might leave the imputations on Massachusetts. But the case is stronger yet. I have referred to the Stamp Act. The parallel is of such aptness and importance, that, though on a former occasion I presented it to the Senate, I cannot forbear from pressing it again. As the precise character of this Act may not be familiar, allow me to remind the Senate that it was an attempt to draw money from the Colonies through a stamp tax, while the determination of certain questions of forfeiture under the statute was delegated, not to the Courts of Common Law, but to Courts of Admiralty, without trial by jury. This Act was denounced in the Colonies at its passage, as contrary to the British Constitution, on two principal grounds, identical in character with the two chief grounds on which the Slave Act is now declared to be unconstitutional: first, as an assumption by Parliament of powers not belonging to it, and an infraction of rights secured to the Colonies; and, secondly, as a denial of trial by jury in certain cases of property. On these grounds the Stamp Act was held to be an outrage.

The Colonies were aroused against it. Virginia first declared herself by solemn resolutions, which the timid thought "treasonable," — yes, Sir, "treasonable," [1] —

[1] Hutchinson, History of Massachusetts, Vol. III. p. 119.

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just as that word is now applied to recent manifestations of opinion in Boston, — even to the memorial of her twenty-nine hundred merchants. But these "treasonable" resolutions soon found response. New York followed. Massachusetts came next. In an address from the Legislature to the Governor, the true ground of opposition to the Stamp Act, coincident with the two radical objections to the Slave Act, are clearly set forth, with the following pregnant conclusion: —

"We deeply regret it that the Parliament has seen fit to pass such an act as the Stamp Act; we flatter ourselves that the hardships of it will shortly appear to them in such a point of light as shall induce them, in their wisdom, to repeal it; *in the mean time we must beg your Excellency to excuse us from doing anything to assist in the execution of it.*"[1]

The Stamp Act was welcomed in the Colonies by the Tories of that day, precisely as the unconstitutional Slave Act has been welcomed by an imperious class among us. Hutchinson, at that time Lieutenant-Governor and Judge in Massachusetts, wrote to Ministers in England: —

"The Stamp Act is received among us with as much decency as could be expected. It leaves no room for evasion, and will execute itself."[2]

Like Judges of our day, in charges to Grand Juries, he resolutely vindicated the Act, and admonished "the jurors and people" to obey.[3] Like Governors of our day, Bernard, in his speech to the Legislature of Massachusetts, demanded unreasoning submission. "I

[1] Journal of the House of Representatives of Massachusetts Bay, October 24, 1765, p. 135. Hutchinson, Vol. III., Appendix, p. 474.

[2] Bancroft, History of the United States, Vol. V. p. 272.

[3] Ibid.

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shall not," says this British Governor, "enter into any disquisition of the policy of the Act. I have only to say that it is an Act of the Parliament of Great Britain."[1] The elaborate answer of Massachusetts — the work of Samuel Adams, one of the pillars of our history — was pronounced "the ravings of a parcel of wild enthusiasts,"[2] even as recent proceedings in Boston, resulting in the memorial before you, have been characterized on this floor. Am I not right in this parallel?

The country was aroused against the execution of the Act. And here Boston took the lead. In formal instructions to her Representatives, adopted unanimously in town meeting at Faneuil Hall, the following rule of conduct was prescribed: —

"We therefore think it our indispensable duty, in justice to ourselves and posterity, as it is our undoubted privilege, in the most open and unreserved, but decent and respectful terms, to declare our greatest dissatisfaction with this law: *and we think it incumbent upon you by no means to join in any public measures for countenancing and assisting in the execution of the same*, but to use your best endeavors in the General Assembly to have the inherent, unalienable rights of the people of this Province asserted and vindicated, and left upon the public records, that posterity may never have reason to charge the present times with the guilt of tamely given them away."[3]

The opposition spread and deepened, with a natural tendency to outbreak and violence. On one occasion in Boston, it showed itself in the lawlessness of a mob most formidable in character, even as is now charged.

[1] Journal of the House of Representatives, September 25, 1765, p. 119. Hutchinson, Vol. III. p. 467.

[2] Bancroft, History of the United States, Vol. V. p. 349.

[3] Boston Gazette, September 23, 1765.

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Liberty, in her struggles, is too often driven to force. But the town, at a public meeting in Faneuil Hall, called without delay, on the motion of the opponents of the Stamp Act, with James Otis as Chairman, condemned the outrage. Eager in hostility to the execution of the Act, Boston cherished municipal order, and constantly discountenanced all tumult, violence, and illegal proceeding. On these two grounds she then stood: and her position was widely recognized. In reply, March 24, 1766, to an address from the inhabitants of Plymouth, her own consciousness of duty done is thus expressed:—

"If the inhabitants of this metropolis have taken *the warrantable and legal measures to prevent that misfortune, of all others the most to be dreaded, the execution of the Stamp Act*, and, as a necessary means of preventing it, have made any spirited applications for opening the custom-houses and courts of justice, — *if, at the same time, they have bore their testimony against outrageous tumults and illegal proceedings*, and given any example of the love of peace and good order, next to the consciousness of having done their duty is the satisfaction of meeting with the approbation of any of their fellow-countrymen."[1]

Thus was the Stamp Act annulled, even before its actual repeal, which was pressed with assiduity by petition and remonstrance, at the next meeting of Parliament. Among potent influences was the entire concurrence of the merchants, and especially a remonstrance against the Stamp Act by merchants of New York, like that now made against the Slave Act by merchants of Boston. Some at first sought only its mitigation. Even James Otis began with this moderate aim. The King

[1] Boston Gazette, March 31, 1766.

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himself showed a disposition to yield to this extent. But Franklin, who was then in England, when asked whether the Colonies would submit to the Act, if mitigated in certain particulars, replied: "No, never, unless compelled by force of arms."[1] Then it was that the great Commoner, William Pitt, in an ever-memorable speech, uttered words which fitly belong to this occasion. He said:—

"Sir, I have been charged with giving birth to sedition in America. They have spoken their sentiments with freedom against this unhappy Act, and that freedom has become their crime. Sorry I am to hear the liberty of speech in this House imputed as a crime. But the imputation shall not discourage me. It is a liberty I mean to exercise. No gentleman ought to be afraid to exercise it. It is a liberty by which the gentleman who calumniates it might have profited. He ought to have profited. He ought to have desisted from his project. The gentleman tells us America is obstinate, America is almost in open rebellion. I rejoice that America has resisted. Three millions of people, so dead to all the feelings of Liberty as voluntarily to submit to be slaves, would have been fit instruments to make slaves of the rest. . . . . I would not debate a particular point of law with the gentleman; but I draw my ideas of Freedom from the vital powers of the British Constitution,— not from the crude and fallacious notions too much relied upon, as if we were but in the morning of Liberty. I can acknowledge no veneration for any procedure, law, or ordinance, that is repugnant to reason and the first elements of our Constitution. . . . . The Americans have been wronged. They have been driven to madness by injustice. . . . . Upon the whole, I will beg leave to tell the House what is really my opinion. *It is, that the Stamp Act be repealed, absolutely, totally, and*

[1] Hansard, Parliamentary History, XVI. 140.

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immediately, — that the reason for the repeal be assigned, because it was founded on an erroneous principle." [1]

Thus spoke this great orator, at the time tutelary guardian of American Liberty. He was not unheeded. Within less than a year from its original passage, the Stamp Act — assailed as unconstitutional on the precise grounds which I now occupy in assailing the Slave Act — was driven from the statute-book.

Sir, the Stamp Act was, at most, an infringement of *civil* liberty only, not of *personal* liberty. How often must I say this? It touched questions of property only, and not the personal liberty of any man. Under it, no freeman could be seized as a slave. There was an unjust tax of a few pence, with the chance of amercement by a single judge without jury; but by this statute no person could be deprived of that vital right of all which is to other rights as soul to body, — *the right of a man to himself.* Who can fail to see the difference between the two cases, and how far the tyranny of the Slave Act is beyond the tyranny of the Stamp Act? The difference is inmeasurable. And this will yet be pronounced by history.

I call upon you, then, to receive the petition, and hearken to its prayer. All other petitions asking for change in existing legislation are treated with respect, promptly referred and acted upon. This should not be an exception. The petition asks simply the repeal of an obnoxious statute, which is entirely within the competency of Congress. It proceeds from a large number of respectable citizens, whose autograph signatures are attached. It is brief and respectful, and, in its very

[1] Hansard, Parliamentary History, XVI. 103-108. Bancroft, History of the United States, V. 391-395.

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brevity, shows that spirit of freedom which should awaken a generous response. In refusing to receive it or refer it, according to the usage of the Senate, or in treating it with any indignity, you offer an affront not only to these numerous petitioners, but also to the great Right of Petition, which is never more sacred than when exercised in behalf of Freedom against an odious enactment. Permit me to add, that by this course you provoke the very spirit which you would repress. There is a plant which is said to grow when trodden upon. It remains to be seen if the Boston petitioners have not something of this quality. But this I know, Sir, — that the Slave Act, like Vice, is

> "a monster of so frightful mien,
> As, to be hated, needs but to be seen."

And the occurrences of this day will make it visible to the people in new forms of injustice.

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REPLY TO ASSAILANTS:

OATH TO SUPPORT THE CONSTITUTION; WEAKNESS OF THE SOUTH FROM SLAVERY.

SECOND SPEECH IN THE SENATE ON THE BOSTON PETITION FOR THE REPEAL OF THE FUGITIVE SLAVE ACT, JUNE 28, 1854.

THE preceding speech was followed by a debate without example in anger, excitement, and brutality. Mr. Butler, of South Carolina, Mr. Mason, of Virginia, Mr. Pettit, of Indiana, Mr. Dixon, of Kentucky, Mr. Mallory, of Florida, and Mr. Clay, of Alabama, vied with each other in bullying denunciation of Mr. Sumner.

Mr. Butler began by claiming that the American Revolution was carried through by "slaveholding States," thus making boast for Slavery, — and then turned to pour contempt upon Mr. Sumner, whose speech he characterized as "a species of rhetoric intended to feed the fires of fanaticism in his own State"; then it was "a Fourth of July Oration," — "vapid rhetoric," — "a species of rhetoric which ought not to come from a scholar," — "a rhetoric with more fine color than real strength"; and then he announced, "If sectional agitation is to be fed by such sentiments, such displays, and such things as come from the honorable gentleman near me, I say we ought not to be in a common confederacy, and we should be better off without it." Then again, "If the object be to make the issue between the North and the South, let the issue come." He then asked if Massachusetts "would send fugitives back to us after trial by jury or any other mode?" Then, turning to Mr. Sumner, he demanded, with much impetuosity of manner, "Will this honorable Senator tell me that he will do it?" To which Mr. Sumner promptly replied, "Is thy servant a dog, that he should do this thing?" The *Globe* reports the disorderly ejaculations which followed from Mr. Butler, winding up with the words, "You stand in my presence as a coëqual Senator, and tell me that it is a dog's office to execute the Constitu-

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tion of the United States?" Here Mr. Sumner remarked, "I recognize no such obligation," — meaning, plainly, no obligation to return a fugitive slave.

Mr. Mason, afterwards so conspicuous in the Rebellion, followed in similar vein. He began by saying: "I say, Sir, the dignity of the American Senate has been rudely, wantonly, grossly assailed by a Senator from Massachusetts, — and not only the dignity of the Senate, but of the whole people, trifled with in the presence of the American Senate, either ignorantly or corruptly, I do not know which, nor do I care." He then proceeded to vindicate the "gentleman from Virginia" who had sought his slave in Boston, denounced Mr. Sumner for having "the boldness to speak here of such a man as a slave-hunter," and boasted that the law had been executed in Boston, — that "in that city, within the last fortnight, it has done its office, and done it in the presence of a mob, which that Senator and his associates roused and inflamed to the very verge of treason, subjecting them to traitors' doom, while he and his associates sat here and kept themselves aloof from danger." Then he exclaimed: "Why, Sir, am I speaking of a fanatic, one whose reason is dethroned? Can such a one expect to make impressions upon the American people from his vapid, vulgar declamation here, accompanied by a declaration that he would violate his oath now recently taken?"

All that was said by these two representatives of Slavery was intensified and aggravated by Mr. Pettit, of Indiana, who charged Mr. Sumner with openly declaring in the Senate that he would violate his oath, and then proceeded to foreshadow a proposition for his expulsion. At the same time he vindicated at length his original statement, that the construction put upon the Declaration of Independence by the Abolitionists of the country "made it a self-evident lie, instead of a self-evident truth." At this stage the Senate adjourned, leaving the question of reference still pending.

The next day was occupied by other business, contrary to the declared desire of Mr. Sumner, who said that he had "something further to say" upon the petition. On the 28th of June the attack on Mr. Sumner was renewed by Mr. Pettit, but without taking up the petition. An attempt was made to stifle further debate. Motions to postpone, and then to lay on the table, were proposed, when Mr. Sumner remarked: —

I AM unwilling to stand in the way of the general wish of the Senate to go on with its business; I

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desire at all times to promote its business; but this question has been presented and debated. Several Senators have already expressed themselves on it. Other Senators within my knowledge expect to be heard. I too, Sir, claim the privilege of being heard again, in reply to remarks which have fallen from honorable Senators. I hope, therefore, the memorial will have no disposition that shall preclude its complete discussion.

The Senate refused to postpone, and Mr. Mallory, of Florida, afterwards Secretary of the Navy in the cabinet of Jefferson Davis, began the assault on Mr. Sumner, expressing horror at his declarations in the Senate, and then adducing his early language in the Boston speech so often referred to. The future rebel dwelt with unction on the obligations of an oath, saying: "Sir, if there be any principle in the breast of the American citizen which more than any other lies at the foundation of law, morals, and society, it is his habitual observance and recognition of *all* the sacred obligations of an oath; and this no man knows better than the Senator himself." Mr. Clay, of Alabama, afterwards a violent rebel, succeeded in interpolating into the speech of Mr. Mallory a tirade of personality and brutality, which will be found in the *Globe*, and, after presenting a portrait meant for Mr. Sumner, "who held himself irresponsible to all law, feeling the obligation neither of the Divine law, nor of the law of the land, *nor of the law of honor*," proceeded to ask, "How would such a miscreant be treated? Why, if you could not reach him with the arm of the municipal law, if you could not send him to the Penitentiary, you would *send him to Coventry*." And the orator of Slavery wound up by saying: "If we cannot restrain or prevent this eternal warfare upon the feelings and rights of Southern gentlemen, we may rob the serpent of his fangs, we can paralyze his influence, by placing him in that nadir of social degradation which he merits."

This brief account of the debate is important, as showing the atmosphere of the Senate, and the personal provocation, when Mr. Sumner at last obtained the floor and spoke as follows.

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MR. PRESIDENT, — Since I had the honor of addressing the Senate two days ago, various Senators have spoken. Of these, several have alluded to me in terms clearly beyond the sanction of parliamentary debate. Of this I make no complaint, though, for the honor of the Senate, at least, it were well, had it been otherwise. If to them it seems fit, courteous, parliamentary, let them

> "unpack the heart with words,
> And fall a-cursing, like a very drab,
> A scullion":

I will not interfere with the enjoyment they find in such exposure of themselves. They have given us a taste of their quality. Two of them, the Senator from South Carolina [Mr. BUTLER], who sits immediately before me, and the Senator from Virginia [Mr. MASON], who sits immediately behind me, are not young. Their heads are amply crowned by Time. They did not speak from any ebullition of youth, but from the confirmed temper of age. It is melancholy to believe that in this debate they showed themselves as they are. It were charitable to believe that they are in reality better than they showed themselves.

I think, Sir, that I am not the only person on this floor, who, listening to these two self-confident champions of that peculiar fanaticism of the South, was reminded of the striking words of Jefferson, picturing the influence of Slavery, where he says: "The whole commerce between master and slave is a perpetual exercise of the most boisterous passions, the most unremitting despotism, on the one part, and degrading submission on the other. Our children see this, and learn to imitate it;

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for man is an imitative animal. . . . . The parent storms. The child looks on, catches the lineaments of wrath, puts on the same airs in the circle of smaller slaves, gives a loose to the worst of passions, and, thus nursed, educated, and daily exercised in tyranny, cannot but be stamped by it with odious peculiarities. *The man must be a prodigy, who can retain his manners and morals undepraved by such circumstances.*"[1] Nobody, who witnessed the Senator from South Carolina or the Senator from Virginia in this debate, will place either of them among the "prodigies" described by Jefferson. As they spoke, the Senate Chamber must have seemed to them, in the characteristic fantasy of the moment, a plantation well-stocked with slaves, over which the lash of the overseer had free swing. Sir, it gives me no pleasure to say these things. It is not according to my nature. Bear witness that I do it only in just self-defence against the unprecedented assaults and provocations of this debate. In doing it, I desire to warn certain Senators, that, if, by any ardor of menace, or by any tyrannical frown, they expect to shake my fixed resolve, they expect a vain thing.

There is little that fell from these two champions, as the fit was on, which deserves reply. Certainly not the hard words they used so readily and congenially. The veteran Senator from Virginia [Mr. MASON] complained that I had characterized one of his "constituents" — a person who went all the way from Virginia to Boston in pursuit of a slave — as Slave-Hunter. Sir, I choose to call things by their right names. White I call white, and black I call black. And where a person degrades himself to the work of chasing a fellow-man,

[1] Notes on Virginia, Query XVIII.

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who, under the inspiration of Freedom and the guidance of the North Star, has sought a freeman's home far away from coffle and chain, — that person, whosoever he may be, I call Slave-Hunter. If the Senator from Virginia, who professes nicety of speech, will give me any term more precisely describing such an individual, I will use it. Until then, I must continue to use the language which seems to me so apt. But this very sensibility of the veteran Senator at a just term, truly depicting an odious character, shows a shame which pleases me. It was said by a philosopher of Antiquity that a blush is the sign of virtue; and permit me to add, that, in this violent sensibility, I recognize a blush mantling the cheek of the honorable Senator, which even his plantation manners cannot conceal.

And the venerable Senator from South Carolina, too, [Mr. BUTLER,] — he has betrayed his sensibility. Here let me say that this Senator knows well that I always listen with peculiar pleasure to his racy and exuberant speech, as it gurgles forth, — sometimes tinctured by generous ideas, — except when, forgetful of history, and in defiance of reason, he undertakes to defend what is obviously indefensible. This Senator was disturbed, when, to his inquiry, personally, pointedly, and vehemently addressed to me, whether I would join in returning a fellow-man to Slavery, I exclaimed: "Is thy servant a dog, that he should do this thing?" In fitful phrase, which seemed to come from unconscious excitement, so common with the Senator, he shot forth various cries about "dogs," and, among other things, asked if there was any "dog" in the Constitution? The Senator did not seem to bear in mind, through the heady currents of that moment, that, by the false interpreta-

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tion he fastens upon the Constitution, he has helped to nurture there a whole kennel of Carolina bloodhounds, trained, with savage jaw and insatiable scent, for the hunt of flying bondmen. No, Sir, I do not believe that there is any "kennel of bloodhounds," or even any "dog," in the Constitution.

But, Mr. President, since the brief response which I made to the inquiry of the Senator, and which leaped unconsciously to my lips, has drawn upon me such various attacks, all marked by grossness of language and manner, — since I have been charged with openly declaring a purpose to violate the Constitution, and to break the oath which I have taken at that desk, I shall be pardoned for showing simply how a few plain words will put all this down. The authentic report in the "Globe" shows what was actually said. The report in the "Sentinel" is substantially the same. And one of the New York papers, which has been put into my hands since I entered the Senate Chamber to-day, under its telegraphic head, states the incident with substantial accuracy, — though it omits the personal, individual appeal addressed to me by the Senator, and preserved in the "Globe." Here is the New York report.

"MR. BUTLER. I would like to ask the Senator, if Congress repealed the Fugitive Slave Law, would Massachusetts execute the Constitutional requirements, and send back to the South the absconding slaves?

"MR. SUMNER. Do you ask me if I would send back a slave?

"MR. BUTLER. Why, yes.

"MR. SUMNER. 'Is thy servant a dog, that he should do this thing?'"[1]

[1] New York Daily Times, June 27, 1854.

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To any candid mind, either of these reports renders anything further superfluous. The answer is explicit and above impeachment. Indignantly it spurns a service from which the soul recoils, while it denies no constitutional obligation. But Senators who are so swift in misrepresentation, and in assault upon me as disloyal to the Constitution, deserve to be exposed, and it shall be done.

Now, Sir, I begin by adopting as my guide the authoritative words of Andrew Jackson, in 1832, in his memorable veto of the Bank of the United States. To his course at that critical time were opposed the authority of the Supreme Court *and his oath to support the Constitution.* Here is his triumphant reply.

"If the opinion of the Supreme Court cover the whole ground of this Act, it ought not to control the coördinate authorities of this Government. The Congress, the Executive, and the Court must, each for itself, be guided by its own opinion of the Constitution. *Each public officer, who takes an oath to support the Constitution, swears that he will support it as he understands it, and not as it is understood by others.* It is as much the duty of the House of Representatives, of the Senate, and of the President, to decide upon the constitutionality of any bill or resolution which may be presented to them for passage or approval, as it is of the Supreme Judges, when it may be brought before them for judicial decision. . . . . The authority of the Supreme Court must not, therefore, be permitted to control the Congress or the Executive, when acting in their legislative capacities, but to have only such influence as the force of their reasoning may deserve." [1]

Mark these words: "Each public officer, who takes an oath to support the Constitution, swears that he will

[1] Senate Journal, 22d Cong. 1st Sess., pp. 438, 439.

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support it as he understands it, and not as it is understood by others." Yes, Sir, AS HE UNDERSTANDS IT, *and not as it is understood by others.* Does any Senator here dissent from this rule? Does the Senator from Virginia? Does the Senator from South Carolina? [*Here Mr. Sumner paused, but there was no reply.*] At all events, I accept the rule as just and reasonable, — in harmony, too, let me assert, with that Liberty which scorns the dogma of *passive obedience*, and asserts the inestimable right of private judgment, whether in religion or politics. In swearing to support the Constitution at your desk, Mr. President, I did not swear to support it as *you* understand it, — oh, no, Sir! — or as the Senator from Virginia understands it, — by no means! — or as the Senator from South Carolina understands it, with a kennel of bloodhounds, or at least a "dog" in it, "pawing to get free his hinder parts," in pursuit of a slave. No such thing. Sir, I swore to support the Constitution *as I understand it*, — nor more, nor less.

But Andrew Jackson was not alone in this rule of conduct. Statesmen before and since have declared it also, — nobody with more force and constancy than Jefferson, who was, indeed, the author of it, so far as anybody can be the author of what springs so obviously from common sense. Repeatedly he returns to it, expressing it in various forms. "Each department," he insists, "is truly independent of the others, and has an equal right to decide for itself *what is the meaning of the Constitution* in the cases submitted to its action, and especially where it is to act ultimately and without appeal."[1] I content myself with a single text from this

[1] Letter to Judge Roane, Sept. 6, 1819: Writings, Vol. VII. p. 135. See also, p. 178, Letter to Mr. Jarvis, Sept. 28, 1820; and, Vol. VI. pp. 461, 462, Letter to W. H. Torrance, June 11, 1815.

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authority. The same rule was also announced by Hon. John Holmes, a Representative from Massachusetts, afterwards Senator from Maine, in the famous debate on the admission of Missouri. "This Constitution," he declares, "which I hold in my hand, I am sworn to support, not according to legislative or judicial exposition, *but as I shall understand it.*" [1] Here is the rule of Jackson, almost in his language, twelve years before he uttered it.

And since Jackson we have the rule stated with great point in this very Chamber, by no less an authority — at least with Democrats — than Mr. Buchanan. Here are a few words from his speech on the United States Bank.

"If all the judges and all the lawyers in Christendom had decided in the affirmative, when the question is thus brought home to me as a legislator, bound to vote for or against a new charter, upon my oath to support the Constitution, *I must exercise my own judgment.* I would treat with profound respect the arguments and opinions of judges and constitutional lawyers; but if after all they failed to convince me that the law was constitutional, I should be guilty of perjury before high Heaven, if I voted in its favor. . . . . Even if the judiciary had settled the question, I should never hold myself bound by their decision. . . . . I shall never consent to place the political rights and liberties of this people in the hands of any judicial tribunal." [2]

In short, he would exercise his own judgment: and this is precisely what I intend to do on the proposition to hunt slaves.

Now I will not occupy your time, nor am I so disposed

[1] Annals of Congress, 16th Cong. 1st Sess., I. 967, Jan. 27, 1820.
[2] Congressional Globe, July 6, 1841, Appendix, pp. 162, 163.

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at this moment, nor does the occasion require it, by entering upon any minute criticism of the clause in the Constitution touching the surrender of "fugitives from service." A few words only are needful. Assuming, Sir, in the face of commanding rules of interpretation, all leaning towards Freedom, that, in the evasive language of this clause, "paltering in a double sense," the words employed can be judicially regarded as justly applicable to fugitive slaves, which, as you ought to know, Sir, is often most strenuously and conscientiously denied, thus sponging the whole clause out of existence, except as a provision for the return of persons actually bound by lawful contract, but on which I now express no opinion, — assuming, I say, this interpretation, so hostile to Freedom, and derogatory to the members of the National Convention, who solemnly declared that they would not give any sanction to Slavery, or admit in the Constitution the idea that there could be property in men, — assuming, I repeat, an interpretation which every principle of the Common Law, claimed by our fathers as their birthright, must disown, — admitting, for the moment only, that the Constitution of the United States has any words which in any legal intendment can constrain fugitive slaves, — then I desire to say, that, as I understand the Constitution, this clause does not impose upon me, as Senator or citizen, any obligation to take part, directly or indirectly, in the surrender of a fugitive slave.

Sir, as Senator, I have taken at your desk the oath to support the Constitution, *as I understand it.* And understanding it as I do, I am bound by that oath, Mr. President, to oppose all enactments by Congress on the subject of fugitive slaves, as a flagrant violation of the

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Constitution; especially must I oppose the last act, as a tyrannical usurpation, kindred in character to the Stamp Act, which our fathers indignantly refused to obey. Here my duties, under the oath which I have taken as Senator, end. There is nothing beyond. They are all absorbed in the constant, inflexible, righteous obligation to oppose every exercise by Congress of any power over the subject. In no respect by that oath can I be compelled to duties *in other capacities, or as a simple citizen,* especially when revolting to my conscience. Now in this interpretation of the Constitution I may be wrong; others may differ from me; the Senator from Virginia may be otherwise minded, and the Senator from South Carolina also; and they will, each and all, act according to their respective understanding. For myself, I shall act according to mine. On this explicit statement of my constitutional obligations I stand, as upon a living rock; and to the inquiry, in whatever form addressed to my personal responsibility, whether I would aid, directly or indirectly, in reducing or surrendering a fellow-man to bondage, I reply again, "Is thy servant a dog, that he should do this thing?"

And, Sir, looking round upon this Senate, I might ask fearlessly, how many there are, even in this body, — if, indeed, there be a single Senator, — who would stoop to any such service? Until some one rises and openly confesses his willingness to become a Slave-Hunter, I will not believe there can be one. [*Here Mr. Sumner paused, but nobody rose.*] And yet honorable and chivalrous Senators have rushed headlong to denounce me because I openly declared my repudiation of a service at which every manly bosom must revolt. "Sire, I

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have found in Bayonne good citizens and brave soldiers, *but not one executioner*," was the noble utterance of the Governor of that place to Charles the Ninth of France, in response to the royal edict for the massacre of St. Bartholomew;[1] and such a spirit, I trust, will yet animate the people of this country, when pressed to the service of "dogs."

To that other question which has been proposed, whether Massachusetts, by State laws, will carry out the offensive clause in the Constitution according to the understanding of the venerable Senator from South Carolina, I reply, that Massachusetts, at all times, has been ready to do her duty under the Constitution, as she understands it, and I doubt not will ever continue of this mind. More than this I cannot say.

In quitting this topic, I cannot forbear to remark that the assault on me for my disclaimer of all constitutional obligation, resting upon me as Senator or citizen, to aid in enslaving a fellow-man, or in surrendering him to Slavery, comes with ill grace from the veteran Senator from Virginia, a State which, by its far-famed resolutions of 1798, claimed to determine its constitutional obligations, even to the extent of openly declaring two different Acts of Congress null and void; and it comes even more strangely from the venerable Senator from South Carolina, a State which, in latter days, has arrayed itself openly against the national authorities, and which threatens nullification as often as babies cry.

Surely the Senator from South Carolina, with his silver-white locks, would have hesitated to lead this assault upon me, had he not for the moment been entirely oblivious of the history of the State which he

[1] Sismondi, Histoire de France, Tom. XIX. p. 177, note.

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represents. Not many years have passed since an incident occurred at Charleston, in South Carolina, — not at Boston, in Massachusetts, — which ought to be remembered. The postmaster of that place, acting under a controlling Public Opinion there, informed the head of his Department at Washington that he had determined to suppress all *Antislavery* publications, and requested instructions for the future. Thus, in violation of the laws of the land, the very mails were rifled, and South Carolina smiled approbation. But still further. The Postmaster-General, Mr. Kendall, after prudently alleging, that, as he had not seen the papers in question, he could not give an opinion of their character, proceeded to say that he had been *informed* that they were inflammatory, incendiary, and insurrectionary, and then announced: —

"By no act or direction of mine, official or private, could I be induced to aid knowingly in giving circulation to papers of this description, directly or indirectly. *We owe an obligation to the laws*, but a *higher* one to the communities in which we live; and if the former be perverted to destroy the latter, *it is patriotism to disregard them.* Entertaining these views, I cannot sanction, and will not condemn, the step you have taken."[1]

Such was the approving response of the National Government to the Postmaster of Charleston, when, for the sake of Slavery, and without any constitutional scruple, he set himself against an acknowledged law of the land. And yet the venerable Senator from South Carolina now presumes to denounce me, when, for the sake of Freedom, and in the honest interpretation of

[1] Letter of Postmaster-General to Postmaster at Charleston, S. C., August 4, 1835: Niles's Weekly Register, 4th Ser. Vol. XII. p. 448.

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my constitutional obligations, I decline an offensive service.

There is another incident in the history of South Carolina, which, as a loyal son of Massachusetts, I cannot forget, and which rises now in judgment against the venerable Senator. Massachusetts ventured to commission a distinguished gentleman, of blameless life and eminent professional qualities, who had served with honor in the other House [Hon. SAMUEL HOAR], to reside at Charleston for a brief period, in order to guard the rights of her free colored citizens, assailed on arrival there by an inhospitable statute, so gross in its provisions that an eminent character of South Carolina, a Judge of the Supreme Court of the United States [Hon. WILLIAM JOHNSON], had condemned it as "trampling on the Constitution," and "a direct attack upon the sovereignty of the United States."[1] Massachusetts had read in the Constitution a clause closely associated with that touching fugitives from service, to the following effect: "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States," and supposed that this would yet be recognized by South Carolina. But she was mistaken. Her venerable representative, an unarmed old man, with hair as silver-white almost as that of the Senator before me, was beset in Charleston by a "respectable" mob, prevented from entering upon his duties, and driven from the State, — while the Legislature stepped forward to sanction this shameless, lawless act, by placing on the statute-book an order for his expulsion. And yet, Sir, the excitable Senator from South Carolina is fired by the

[1] Letter to John Quincy Adams, July 3, 1824; Opinion in Ex parte Henry Elkison, August 7, 1823: Report No. 80, Com. H. of R., 27th Cong. 1st Sess., Jan. 20, 1843, Appendix, pp. 14, 29.

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fancied delinquencies of Massachusetts towards Slave-Hunters, and also by my own refusal to render them any aid or comfort; he shoots questions in volleys, assumes to measure our duties by his understanding, and ejaculates a lecture at Massachusetts and myself. Sir, before that venerable Senator again ventures thus, let him return to his own State, seamed all over with the scars of Nullification, and first lecture there. Ay, Sir, let him look into his own heart, and lecture himself.

But enough for the present on the extent of my constitutional obligations to become Slave-Hunter. There are, however, yet other things in the assault of the venerable Senator, which, for the sake of truth, in just defence of Massachusetts, and in honor of Freedom, shall not be left unanswered. Alluding to those days when Massachusetts was illustrated by Otis, Hancock, and "the brace of Adamses," when Faneuil Hall sent forth notes of Liberty which resounded even to South Carolina, and the very stones in the streets of Boston rose in mutiny against tyranny, the Senator with the silver-white locks, in the very ecstasy of Slavery, broke forth in exclamation that Massachusetts was then "slaveholding," and he presumed to hail these patriots representatives of "hardy, slaveholding Massachusetts." Sir, I repel the imputation. True, Massachusetts was "hardy"; but she was not, in any just sense, "slaveholding." Had she been so, she could not have been "hardy." The two characteristics are inconsistent as weakness and strength, as disease and health, — I had almost said, as death and life.

The Senator opens a page on which I willingly dwell. Sir, Slavery never flourished in Massachusetts; nor did

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it ever prevail there at any time, even in early colonial days, in such measure as to be a distinctive feature of her progressive civilization. Her few slaves were for a term of years or for life. If, in fact, their issue was sometimes held in bondage, it was never by sanction of any statute or law of Colony or Commonwealth. Such has been the solemn and repeated judgment of her Supreme Court.[1] In all her annals, no person was ever born a slave on the soil of Massachusetts. This, of itself, is an answer to the imputation of the Senator.

Benign and brilliant Acts of her Legislature, at an early date, show her sensibility on this subject. Unhappily, in 1645, two negroes were brought from the coast of Guinea in a Boston ship. Instead of holding them as slaves, the record shows "a resolve to send them back."[2] One year later, "a negro interpreter, with others, unlawfully taken," became the occasion of another testimony. Thus spoke Massachusetts:—

"The General Court, conceiving themselves bound by the first opportunity to bear witness against the heinous and crying sin of man-stealing, as also to prescribe such timely redress for what is past, *and such a law for the future, as may sufficiently deter all others belonging to us to have to do in such vile and most odious courses, justly abhorred of all good and just men*, do order, that the negro interpreter, with others, unlawfully taken, be, by the first opportunity, at the charge of the country for present, sent to his native country of Guinea, and a letter with him, of the indignation of the Court thereabouts, and justice thereof."[3]

[1] Littleton *v.* Tuttle, 4 Mass., 128, note; Lanesborough *v.* Westfield, 16 Mass., 75; Edgartown *v.* Tisbury, 10 Cush., 410; Jackson *v.* Phillips et als., 14 Allen, 562.

[2] Mass. Records, Oct. 14, 1645, Vol. III. p. 49. Winthrop, History of New England, Vol. II. p 244.

[3] Mass. Records, Nov. 4, 1646, Vol. III. p. 84.

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Note the language: "Such vile and most odious courses, justly abhorred of all good and just men." Better words could not be employed against the infamies of Slavery in our day. The Colony that could issue this noble decree was inconsistent with itself, when it permitted its rocky soil to be pressed by the footstep of a single slave. But a righteous public opinion early and constantly set its face against Slavery. As early as 1701 the following vote appears on the Records of Boston: "The Representatives are desired to promote the encouraging the bringing of white servants, *and to put a period to negroes being slaves.*"[1] Perhaps, in all history, this is the earliest testimony from any official body against Negro Slavery, and I thank God that it came from Boston, my native town. In 1705 a heavy duty was imposed upon every negro imported into the Province;[2] in 1712 the importation of Indians as servants or slaves was strictly forbidden;[3] but the general subject of Slavery attracted little attention till the beginning of the controversy which ended in the Revolution, when the rights of the blacks were blended by all true patriots with those of the whites. Sparing unnecessary detail, suffice it to say, that, as early as 1770, one of the courts of Massachusetts, anticipating by two years the renowned judgment in Somerset's case, established within its jurisdiction the principle of emancipation, and, under its touch of magic power, changed slave into freeman. Similar decisions followed from other courts. In 1776 the whole number of blacks, both

[1] Coll. Mass. Hist. Soc., 2d Ser. Vol. VIII. p. 184. Drake's History and Antiquities of Boston, p. 525.

[2] Acts and Laws of the Province of the Massachusetts Bay, 1705, Ch. VI. § 6.

[3] Ibid., 1711 – 12, Ch. V.

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free and slave, sprinkled thinly over "hardy" Massachusetts, was five thousand two hundred and forty-nine, being to the whites as one to sixty-five,[1] — while in "slaveholding" South Carolina the number of negro slaves at that time was not far from one hundred thousand, being at least one slave for every freeman, thus rendering that Colony anything but "hardy." In these figures I give South Carolina the benefit of the most favorable estimates. Good authorities make the slaves at that time in this State more than twice as numerous as the freemen.[2] At last, in 1780, even before the triumph of Yorktown led the way to that peace which set its seal upon National Independence, Massachusetts, glowing with the struggles of the Revolution, and filled with the sentiments of Freedom, placed foremost in her Declaration of Rights those emphatic words, "All men are born free and equal," and by this declaration exterminated every vestige of Slavery within her borders. All hail, then, to Massachusetts! the just and generous Commonwealth in whose behalf I have the honor to speak.

Thus, Sir, does the venerable Senator err, when he presumes to vouch Massachusetts for Slavery, and to associate this odious institution with the names of her great patriots.

But the venerable Senator errs yet more, if possible, when he attributes to "slaveholding" communities a leading part in those contributions of arms and treasure by which independence was secured. Here are his

[1] Coll. Mass. Hist. Soc., Vol. IV. p. 198.

[2] Hewatt, History of South Carolina, Vol. II. p. 292; Drayton, View of South Carolina, p. 103: Mills, Statistics of South Carolina, p. 177. In harmony with these is the recent History of South Carolina, by William Gilmore Simms, (ed. 1860,) p. 199.

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exact words, as I find them in the "Globe," revised by himself.

"Sir, when blood was shed upon the plains of Lexington and Concord, in an issue made by Boston, to whom was an appeal made, and from whom was it answered? The answer is found in the acts of slaveholding States, — *animis opibusque parati.* Yes, Sir, the independence of America, to maintain republican liberty, was won by the arms and treasure, by the patriotism and *good faith*, of slaveholding communities."[1]

Observe, Sir, the words as emphasized by himself. Surely, the Senator, with his silver-white locks, all fresh from the outrage of the Nebraska Bill, and that overthrow of a solemn compact, cannot stand here and proclaim the "*good faith* of slaveholding communities," except in irony, — yes, Sir, in irony. And let me add, that, when this Senator presumes to say that American Independence "was won by the arms and treasure of *slaveholding* communities," he speaks either in irony or in ignorance.

The question which the venerable Senator from South Carolina opens by his vaunt I have no desire to discuss; but since it is presented, I confront it at once. This is not the first time, during my brief service here, that this Senator has sought on this floor to provoke comparison between slaveholding communities and the Free States.

MR. BUTLER [*from his seat*]. You cannot quote a single instance in which I have done it. I have always said I thought it was in bad taste, and I have never attempted it.

[1] Congressional Globe, 33d Cong. 1st Sess., June 26, 1854, Vol. XXVIII. p. 1516.

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MR. SUMNER. I beg the Senator's pardon. I always listen to him, and I know whereof I affirm. He has profusely dealt in it. I allude now only to a single occasion. In his speech on the Nebraska Bill, running through two days, it was one of his commonplaces. There he openly presented a contrast between the Free States and "slaveholding communities" in certain essential features of civilization, and directed shafts at Massachusetts which called to his feet my distinguished colleague at that time [Mr. EVERETT], and more than once compelled me to take the floor. And now, Sir, the venerable Senator, not rising from his seat and standing openly before the Senate, undertakes to deny that he has dealt in such comparisons.

MR. BUTLER. Will the Senator allow me?

MR. SUMNER. Certainly: I yield the floor to the Senator.

MR. BUTLER. Whenever that speech is read, — and I wish the Senator had read it before he commented on it with a good deal of rhetorical enthusiasm, — it will be found that I was particular not to wound the feelings of the Northern people who were sympathizing with us in the great movement to remove odious distinctions. I was careful to say nothing that would provoke invidious comparisons; and when that speech is read, notwithstanding the vehement assertion of the honorable Senator, he will find, that, when I quoted the laws of Massachusetts, particularly one Act which I termed the *Toties Quoties* Act, by which every negro was whipped every time he came into Massachusetts, I quoted them with a view to show, not a contrast between South Carolina and Massachusetts, but to show that in the whole of this country, from the beginning to this time, — even in my own State, — I made no exception, — public opinion had undergone a change, and that it had undergone the same change in Massachusetts; for at one time they did not re-

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gard this institution of Slavery with the same odium that they do at this time. That was the purpose; and I challenge the Senator, as an orator of fairness, to look at it and see if it is not so.

MR. SUMNER. Has the Senator done?

MR. BUTLER. I may not be done presently; but that is the purport of that speech.

MR. SUMNER. Will the Senator refer to his own speech? He now admits, that, under the guise of an argument, he did draw attention to what he evidently regarded an odious law of Massachusetts. And, Sir, I did not forget, that, in doing this, there was, at the time, an apology which ill concealed the sting.[1] But let that

[1] The following, from the *Congressional Globe* (33d Cong. 1st Sess., Appendix, p. 234), will show the spirit of Mr. Butler's remarks, on the occasion referred to.

"MR. BUTLER. . . . . I have said, that, before the adoption of the Missouri Compromise, even the Northern States were not so very kind and philanthropic towards this race, which is now under the peculiar care of the Senator from Massachusetts, as he would represent. I have before me a statute of that State, which I ask my friend from Alabama [Mr. C. C. Clay], who sits beside me, to read."

[Here Mr. Clay read from the Act in question (withholding the title, "*An Act for suppressing and punishing of Rogues, Vagabonds, Common Beggars, and other Idle, Disorderly, and Lewd Persons*") a section prohibiting the tarrying of vagrant negroes in the State *longer than two months*, on pain, in case of complaint, and continuance after due warning, of being "whipped not exceeding ten stripes, and ordered to depart out of the Commonwealth within ten days; and if he or she shall not so depart, the same process to be had and punishment inflicted, and so *toties quoties*."]

"MR. BROADHEAD. What is the date of that statute?

"MR. BUTLER. Seventeen hundred and eighty-eight; and it remained on the statute-book *in full force* until 1823, until after the adoption of the Missouri Compromise. I will call it the *Toties Quoties* Act. The negroes were to be whipped every time they happened to get to Boston, or any other place in Massachusetts. That is a specimen of statutory philanthropy at least."

To this Mr. Sumner replied at once:—

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pass. The Senator is strangely oblivious of the statistical contrasts which he borrowed from the speech of a member of the other House, and which, at his request, were read by a Senator before him on this floor. The Senator, too, is strangely oblivious of yet another imputation, which, at the very close of his speech, he shot as a Parthian arrow at Massachusetts. It is he, then, who is the offender; and no hardihood of denial can extricate him. For myself, Sir, I understand the sensibilities of Senators from "slaveholding communities," and would not wound them by a superfluous word. Of Slavery I speak strongly, as I must; but thus far, even at the expense of my argument, I have avoided the contrasts founded on detail of figures and facts which are so obvious between the Free States and "slaveholding com-

"The Senator from South Carolina is so jealous of the honor of his own State, that he will pardon me, if I interrupt him for one moment, merely to explain the offensive statute to which he has referred. I have nothing to say in vindication of it: I simply desire that it should be understood. This statute, which bears date 1788, anterior to the National Government, was applicable only to Africans or negroes not citizens of some one of the United States; and, according to contemporary evidence, it was intended to protect the Commonwealth against the vagabondage of fugitive slaves. But I do not vindicate the statute: I only explain it; and I add, that it has long since been banished from the statute-book."

There is a Report to the Massachusetts Legislature by Theodore Lyman, Jr., as Chairman of a Committee "to report a Bill concerning the Admission into this State of Free Negroes and Mulattoes," dated January 16, 1822, which confirms the position of Mr. Sumner. After a few preliminary remarks, it is said: —

"The Committee have already found in the statute-books of this Commonwealth a law, passed in 1788, regulating the residence in this State of certain persons of color. They believe that *this law has never been enforced*, and, ineffectual as it has proved, they would never have been the authors of placing among the statutes a law so arbitrary in its principle, and in its operation *so little accordant with the institutions, feelings, and practices of the people of this Commonwealth*."

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munities"; especially have I shunned all allusion to South Carolina. But the venerable Senator to whose discretion that State has intrusted its interests here will not allow me to be still.

God forbid that I should do injustice to South Carolina! I know well the gallantry of many of her sons. I know the response which she made to the appeal of Massachusetts for union against the Stamp Act — the Fugitive Slave Act of that day — by the pen of Christopher Gadsden. And I remember with sorrow that this patriot was obliged to confess, at the time, her "weakness in having such a number of slaves," though it is to his credit that he recognized Slavery as "crime."[1] I have no pleasure in dwelling on the humiliations of

The Report then goes into a history of the public acts and proceedings in relation to colored persons in Massachusetts, from the earliest colonial times down to the date of the enactment, in order to show the spirit of the people towards this class, and concludes with observations like the following: —

"The feelings of the people disclosed since the year 1760 in the votes of towns and in the verdicts of juries, ... the fact that there is no law at present in force which makes a distinction between white and black persons, ... the same law which allows justices to expel blacks from the State after a certain notice expressly recognizing the right of blacks to become citizens (a law, the constitutionality of which has been called in question, and which it is well known was passed on the same day as the Abolition Act of March, 1788, in order to prevent the State from being overrun with runaway slaves). — blacks having the same public provisions for education, and the same public support in case of sickness and poverty, — many blacks before and during the Revolution having obtained their freedom by a legal process, and, as the spirit of the Constitution of this State abrogates all exclusive laws, thereby becoming invested with all the rights of freemen, and with a capability of becoming freeholders, ... and, above all, the construction given to the first principle in the Declaration of Rights at the time of the adoption of this Constitution, both in the public mind and in the courts of law, — clearly manifest and demonstrate that the people of this Commonwealth have always believed negroes and mulattoes to possess the same right and capability to become citizens as white persons."

[1] Bancroft, History of the United States, Vol. V. pp. 294, 425, 426.

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South Carolina; I have little desire to expose her sores; I would not lay bare even her nakedness. But the Senator, in his vaunt for "slaveholding communities," has made a claim for Slavery so derogatory to Freedom, and so inconsistent with history, that I cannot allow it to pass unanswered.

This, Sir, is not the first time, even during my little experience here, that the same claim has been made on this floor; and this seems the more astonishing, because the archives of the country furnish such ample and undoubted materials for its refutation. The question of the comparative contributions of men by different States and sections of the country in the war of the Revolution was brought forward as early as 1790, in the first Congress under the Constitution, in the animated and protracted debate on the assumption of State debts by the Union. On that occasion, Fisher Ames, a Representative from Massachusetts, famous for classic eloquence, moved a call upon the War Department for the number of men furnished by each State to the Revolutionary armies. The motion, though vehemently opposed, was carried by a small majority. Shortly afterwards an answer to the call was received from the Department, at that time under the charge of General Knox. This answer, which is one of the documents of our history, places beyond cavil or criticism the exact contributions in arms made by each State. Here it is,— taken from the original, in a volume of the "American State Papers," [1] published under the authority of Congress. This is official.

[1] Military Affairs, Vol. I. pp. 14–19. Compare with Coll. New Hamp. Hist. Soc., Vol. I. p. 236.

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Statement of the number of troops and militia furnished by the several States, for the support of the Revolutionary War, from 1775 *to* 1783, *inclusive.*

NORTHERN STATES.	Number of continental troops.	Number of militia.	Total militia and continental troops.	Conjectural estimate of militia.
New Hampshire	12,496	2,093	14,589	3,700
Massachusetts	67,907	15,155	83,062	9,500
Rhode Island	5,908	4,284	10,192	1,500
Connecticut	32,039	7,792	39,831	3,000
New York	17,781	3,312	21,093	8,750
Pennsylvania	25,608	7,357	32,965	2,000
New Jersey	10,726	6,055	16,781	2,500
Total	172,465	46,048	218,513	30,950
SOUTHERN STATES.				
Delaware	2,387	376	2,763	1,000
Maryland	13,912	5,464	19,376	4,000
Virginia	26,678	4,163	30,841	21,880
North Carolina	7,263	2,706	9,969	12,000
South Carolina	6,417	——	6,417	25,850
Georgia	2,679	——	2,679	9,900
Total	59,336	12,709	72,045	74,630

At this time there was but little difference in numbers between the population of the Southern States and that of the Northern States. By the census of 1790 the Southern had a population of 1,851,804; the Northern a population of 1,882,615. Notwithstanding this essential equality of population in the two sections, the North furnished vastly more men than the South.

Of continental troops, the Southern States furnished 59,336; the Northern, 172,465: making about three men furnished to the continental army by the Northern States to one from the Southern.

Of militia whose services are authenticated by the War Office, the Southern States furnished 12,709; the

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Northern, 46,048: making nearly four men contributed to the militia by the Northern States to one from the Southern.

Of militia whose services are not authenticated by the War Office, but are set down in the return as "conjectural" only, we have 74,630 furnished by the Southern States, and 30,950 by the Northern: making, under this head, five men contributed by the Southern to two from the Northern. The chief services of the Southern States, for which the venerable Senator now claims so much, it will be observed with a smile, were *conjectural* only.

Looking, however, at the sum-total of continental troops, authenticated militia, and "conjectural" militia, we have 146,675 from the Southern States, while 249,463 were from the Northern: making upwards of 100,000 men contributed to the war by the Northern more than by the Southern.

The disparity swells, when we compare South Carolina and Massachusetts directly. Of continental troops and authenticated militia and "conjectural" militia, South Carolina furnished 32,267, while Massachusetts furnished 92,562: making nearly three for every one furnished by South Carolina. Look, however, at the continental troops and the authenticated militia from the two States, and here you will find only 6,417 furnished by South Carolina, while 83,062 were furnished by Massachusetts,—*being thirteen times more than by South Carolina, and much more than by all the Southern States together.* Here are facts and figures of which the Senator ought not to be ignorant.

So obvious was this at the time, that we find John Adams recording in his Autobiography, that "almost the

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whole army was derived from New England."[1] General Knox, in a letter to Colonel Joseph Ward, of Massachusetts, under date of July 28, 1780, with regard to the reëstablishment of the army, has a few words in point. After complaining of the general inertness, as sufficient "to induce a ready belief that the mass of America have taken *a monstrous deal of opium*," he says:—

"It is true, the Eastern States and New York have done something in this instance, but no others. Propagate this truth."[2]

In a letter to General Gates, under date of Philadelphia, March 23, 1776, John Adams touches a difference in sentiment between the Northern and Southern States, which of itself accounts for this disparity of military contributions.

"However, my dear friend Gates, all our misfortunes arise from a single source, *the reluctance of the Southern Colonies to republican government*."[3]

Nothing could be stronger, although it is painful to think that it was true.

Foreign testimony, also, is in harmony with the official Statement. The Marquis de Chastellux, who travelled through the States towards the close of the Revolution, records somewhere that he "never met anybody from the North who had not been in the army." So marked and preëminent was the service of the Northern States, ay, Sir, so peculiar and special was the service of Boston, from which comes the present petition, that the Revolution was known in Europe by the name of this patriotic town. Edmund Burke

[1] Works, Vol. III. p. 48; see also p. 87.
[2] Jackson's History of Newton, p. 517.
[3] Works, Vol. I. p. 207.

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exclaimed in Parliament: "The cause of Boston is become the cause of all America. Every part of America is united in support of Boston. By these acts of oppression you have made Boston the Lord Mayor of America."[1] And it was the same on the Continent. Our fathers in arms for Independence were known as "the insurgents of Boston." The French King was praised for protecting with his arms what was called "the justice of the Bostonians."[2] In saying this, I do not speak vaguely or without authority.

Did occasion require, I might go further, and minutely portray the imbecility of Southern States, and particularly of South Carolina, in the War of the Revolution, as compared with Northern States. This is a sad chapter, upon which I dwell unwillingly. Faithful annals record, that, as early as 1778, the six South Carolina regiments, composing, with the Georgia regiment, the regular force of the Southern Department, did not, in the whole, muster above eight hundred men; nor was it possible to fill up their ranks. The succeeding year, the Governor of South Carolina, pressed by British forces, offered to stipulate the neutrality of his State during the war, leaving its permanent position to be decided at the peace: a premonitory symptom of the secession menaced in our own day. After the fatal field of Camden, no organized American force was left in this region. The three Southern States — *animis opibusque parati*, according to the vaunt of the Senator —

[1] Hansard, Parliamentary History, Vol. XVIII. col. 45.

[2] Vie Publique et Privée de Louis XVI., p. 48. See also Memoir of the Right Honorable Hugh Elliot, by the Countess of Minto, published since this speech, where will be found (p. 48) a letter from a fine lady of Vienna, who, writing to Mr. Elliot in 1775, confesses that she has been "Bostonian at heart": *J'etais Bostonienne de cœur.*

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had not a single battalion in the field. During all this period the men of Massachusetts were serving their country, not at home, but away from their own borders: for, from the Declaration of Independence, Massachusetts never felt the pressure of a hostile foot.

The offer of the Governor of South Carolina to stipulate the neutrality of his State during the war has been sometimes called in question. But, unhappily, the case is too clear. General Moultrie, who commanded at Charleston, under the Governor, and whose name has been since given to one of the forts in the harbor there, has furnished an authentic record in two volumes, entitled "Memoirs of the American Revolution, so far as it related to the States of North and South Carolina and Georgia." He is my witness. As the British approached, the Governor and his Council became frightened, and proceeded forthwith to talk about capitulation. At last, after debate, "the question was carried for giving up the town upon a neutrality."[1] Colonel John Laurens was requested to carry this offer of capitulation from the Governor to General Prevost, the British commander; but "he begged to be excused from carrying such a message; that it was much against his inclination; that he would do anything to serve his country, but he could not think of carrying such a message as that." Other envoys were found who most reluctantly undertook this service. The message was as follows:—

"To propose a neutrality during the war between Great Britain and America, and the question, *whether the State shall belong to Great Britain or remain one of the United States*, be determined by the treaty of peace between those two powers."[2]

[1] Moultrie, Memoirs, Vol. I. p. 432.

[2] Ibid., p. 433.

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The same story is told by others. Ramsay, himself of South Carolina, in his "History of the American Revolution," says:—

"Commissioners from the garrison were instructed 'to propose a neutrality during the war between Great Britain and America, and that the question, *whether the State shall belong to Great Britain or remain one of the United States*, be determined by the treaty of peace between these powers.'"[1]

Chief Justice Marshall, in his authentic work, thus chronicles the disgraceful business:—

"The town was summoned to surrender, and the day was spent in sending and receiving flags. The neutrality of South Carolina during the war, leaving the question, *whether that State should finally belong to Great Britain or the United States*, to be settled in the treaty of peace, was proposed by the garrison, and rejected by Prevost."[2]

It is also presented with precision by Professor Bowen, of Harvard University, in his recent Life of General Lincoln, who remarks on it as follows:—

"This proposal did not come merely from the commander of a military garrison, in which case, of course, it would have been only nugatory; the Governor of the State, clothed with discretionary powers, was in the place, and probably most of his Council along with him. Whether such a proposition would have been justifiable under any circumstances is a question that needs not be discussed; at any rate, it would not have evinced much honorable or patriotic feeling. But to make such an offer in the present case was conduct little short of treason."[3]

[1] History of the American Revolution, Vol. II. p. 118.

[2] Life of Washington, Vol. I. (2d edition) pp. 298, 299.

[3] Life of Benjamin Lincoln: Sparks's American Biography, 2d Ser. Vol. XIII. p. 285.

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This author concludes an animated review of the proposition with the remark, that it "was equivalent to an offer from the State to return to its allegiance to the British Crown."[1]

The fate of the State was typified in the capture by the British, some time afterwards, of the ship "South Carolina," of forty guns, the largest and most costly of our infant navy, and called by Cooper "much the heaviest ship that ever sailed under the American flag, until the new frigates were constructed during the War of 1812."[2] But here is the same story. Her service was altogether inadequate.

At last, the military genius and remarkable exertions of General Greene, a Northern man, who assumed the command of the Southern army, prevailed in rescuing South Carolina from British power. But the trials of this successful leader reveal in a striking manner the weakness of the "slaveholding" State he saved. Some of these are graphically presented in his letters.

Writing to President Reed, of Pennsylvania, under date of 4th May, 1781, he says:—

"The strength and resources of these [Southern] States to support the war have been greatly magnified and overrated; and those whose business and true interest it was to give a just state of the situation of things have joined in the deception, and, from a false principle of pride of having the country thought powerful, have led people to believe it was so. It is true, there were many inhabitants, but they were spread over a great extent of country, and near equally divided between the King's interest and ours. The majority

[1] Life of Benjamin Lincoln: Sparks's American Biography, 2d Ser. Vol. XIII. p. 286.

[2] History of the Navy of the United States (2d edition), Vol. I. p. 218.

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is greatly in favor of the enemy's interest now, as great numbers of the Whigs have left the country. . . . . The love of pleasure and the want of principle among many of those who are our friends render the exertions very languid in support of our cause; *and unless the Northern States can give more effectual support, these States must fall.*"[1]

Writing to Colonel Davie, under date of 23d May, 1781, General Greene again exposes the actual condition of the country.

"The animosity between the Whigs and Tories of this State renders their situation truly deplorable. There is not a day passes but there are more or less who fall a sacrifice to this savage disposition. The Whigs seem determined to extirpate the Tories, and the Tories the Whigs. Some thousands have fallen in this way in this quarter, and the evil rages with more violence than ever. If a stop cannot be soon put to these massacres, the country will be depopulated in a few months more, as neither Whig nor Tory can live."[2]

To Lafayette, General Greene, under date of 29th December, 1780, describes the weakness of his troops.

"It is now within a few days of the time you mentioned of being with me. Were you to arrive, you would find a few ragged, half-starved troops in the wilderness, destitute of everything necessary for either the comfort or convenience of soldiers. . . . . The country is almost laid waste, and the inhabitants plunder one another with little less than savage fury. We live from hand to mouth, and have nothing to subsist on but what we collect with armed parties. In this situation, I believe you will agree with me,

[1] Life and Correspondence of Joseph Reed, Vol. II. p. 351. Johnson's Life and Correspondence of Nathaniel Greene, Vol. II. p. 87.

[2] Gordon, History of the Rise, etc., of the Independence of the United States, Vol. IV. p. 99.

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there is nothing inviting this way, especially when I assure you our whole force fit for duty, that are properly clothed and properly equipped, does not amount to eight hundred men." [1]

Writing to Mr. Varnum, a member of Congress, the General says: —

"There is a great spirit of enterprise prevailing among the militia of these Southern States, especially with the volunteers. But their mode of going to war is so destructive, that *it is the greatest folly in the world to trust the liberties of a people to such a precarious defence.*" [2]

Nothing can be more authentic or complete than this testimony. Here, also, is what is said by David Ramsay, an estimable citizen of South Carolina, in his History of the Revolution in that State, published in 1785, only a short time after the scenes which he describes.

"While the American soldiers lay encamped in this inactive situation," (in the low country near Charleston,) "their tattered rags were so completely worn out, that seven hundred of them were as naked as they were born, excepting a small slip of cloth about their waists; and they were nearly as destitute of meat as of clothing." [3]

To the same effect is a letter from Greene to Sumter, under date of Jan. 15, 1781.

"It is a great misfortune that the little force we have is in such a wretched state for want of clothing. More than one half our numbers are in a manner naked, so much so

[1] Johnson's Life and Correspondence of Greene, Vol. I. p. 340.
[2] Ibid., p. 397.
[3] History of the Revolution of South Carolina, Vol. II. p. 258.

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that we cannot put them on the least kind of duty. Indeed, there is a great number that have not a rag of clothes on them, except a little piece of blanket, in the Indian form, around their waists." [1]

The military weakness of this "slaveholding community" is but too apparent. As I show its occasion, you will join with me in amazement that a Senator from South Carolina should attribute Independence to anything "slaveholding." The records of the country, and various voices, all disown his vaunt for Slavery. The State of South Carolina itself, by authentic history, disowns it. I give the proofs.

The first is from the debate on the Confederation in the Continental Congress, as early as July, 1776, when the following passage occurred, which I quote from "Notes of Debates in the Continental Congress in 1775 and 1776," preserved by John Adams. Mr. Lynch, a young representative of South Carolina, showing the sensibilities, if not the evil spirit, engendered by Slavery, speaking in behalf of the Southern States, said: "If it is debated whether their slaves are their property, there is an end of the Confederation. Our slaves being our property, why should they be taxed more than the land, sheep, cattle, horses, &c.?" Without noticing the menace against the Confederation, the beginning of a long line, Franklin replied, with sententious authority: "Slaves rather weaken than strengthen the State, and there is therefore some difference between them and sheep. *Sheep will never make any insurrections.*" [2] Franklin touched the point.

[1] Johnson's Life and Correspondence of Greene, Vol. I. p. 393.

[2] Works of John Adams, Vol. II. p. 498. See also Bancroft's History of the United States, Vol. IX. p. 52.

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And now listen, if you please, to peculiar and decisive testimony, under date of 29th March, 1779, from the Secret Journals of the Continental Congress.

"The Committee appointed to take into consideration *the circumstances of the Southern States*, and the ways and means for *their* safety and defence, report, ... That the State of South Carolina (as represented by the Delegates to the said State, and by Mr. Huger, who has come hither at the request of the Governor of the said State, on purpose to explain the particular circumstances thereof) is UNABLE to make any effectual efforts with militia, by reason of the great proportion of citizens *necessary to remain at home, to prevent insurrections among the negroes*, and to prevent the desertion of them to the enemy; that the state of the country, and *the great numbers of those people among them*, expose the inhabitants to great *danger*, from the endeavors of the enemy to excite them either to revolt or desert." [1]

Here is South Carolina secretly disclosing her military weakness, and its ignoble occasion: thus repudiating in advance the vaunt of her Senator, who finds strength and gratulation in Slavery rather than in Freedom. It was during the war, and in the confessional of the Continental Congress, that, on bended knees, she shrived herself. But the same ignominious confession was made, some time after the war, in open debate, on the floor of Congress, by Mr. Burke, a Representative from South Carolina.

"There is not a gentleman on the floor who is a stranger to the feeble situation of our State, when we entered into the war to oppose the British power. *We were not only without money, without an army or military stores, but we were few in*

[1] Secret Journals, Vol. I. pp. 107, 108.

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number, and likely to be entangled with our domestics, in case the enemy invaded us." [1]

Similar testimony to this weakness was borne by Mr. Madison in open debate in Congress.

"Every addition they [Georgia and South Carolina] receive to their number of slaves *tends to weaken, and render them less capable of self-defence.*" [2]

The historian of South Carolina, Dr. Ramsay, a contemporary observer of the very scenes which he describes, to whom I have already referred, also exposes this weakness.

"The forces under the command of General Prevost marched through the richest settlements of the State, where are the fewest white inhabitants in proportion to the number of slaves. *The hapless Africans, allured with hopes of freedom, forsook their owners,* and repaired in great numbers to the royal army. They endeavored to recommend themselves to their new masters by discovering where their owners had concealed their property, and were assisting in carrying it off." [3]

The same candid historian, describing the invasion of the next year, says: —

"The slaves a *second* time *flocked* to the British army." [4]

At a still later day, Mr. Justice Johnson, of the Supreme Court of the United States, and a citizen of South Carolina, in his elaborate Life of General Greene, speaking of negro slaves, makes the same unhappy admission. He says: —

"But the number dispersed through these [Southern]

[1] Annals of Congress, 1st Cong. 2d Sess., II. 1484, March 30, 1790.
[2] Ibid., 1st Cong. 1st Sess., I. 840, May 13, 1789.
[3] History of South Carolina, Vol. I. pp. 312, 313.
[4] Ibid., p. 334.

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States was very great,—*so great as to render it impossible for the citizens to muster freemen enough to withstand the pressure of the British arms.*" [1]

Here is illustration from an English pamphlet entitled "Account of the Duckenfield Hall Estate Negroes, 1806, Law Case," where will be found the following incident.

"In 1779 I bought ten negroes, which, with sixty others, were taken by a privateer from a plantation in South Carolina."

Thus from every quarter are we conducted to the same conclusion.

And all this cumulative and unimpeachable testimony is reinforced by testimony of an earlier day, also from South Carolina. The Assembly of the Colony represented to the King, in 1734, that they were

"Subject to *many intestine dangers from the great number of negroes* that are now among us." [2]

Another representation shortly afterwards declared:—

"If any stop be put to the exportation of rice from South Carolina to Europe, it . . . . may render the whole Colony an easy prey to their neighbors, the Indians and Spaniards, *and also to those yet more dangerous enemies, their own negroes, who are ready to revolt on the first opportunity,* and are eight times as many in number as there are white men able to bear arms." [3]

Thus was it before, as during the Revolution,—weakness always, nothing but weakness.

And this is precisely according to human experience.

[1] Life of Greene, Vol. II. Appendix, p. 472.
[2] Grahame, History of the United States, Vol. III. p. 161.
[3] Ibid., p. 215

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It was in South Carolina as it had been in other lands where Slavery prevailed. Here I read the testimony of a remarkable writer, Archbishop Whately.

"For if there be any one truth which the deductions of reason alone, independent of history, would lead us to anticipate, and which again history alone would establish independently of antecedent reasoning, it is this: that a whole class of men placed permanently under the ascendency of another as subjects, without the rights of citizens, must be *a source, at the best, of weakness, and generally of danger, to the State*. . . . . It is notorious, accordingly, how much Sparta was weakened and endangered by the Helots, always ready to avail themselves of any public disaster as an occasion for revolt."[1]

The Archbishop then recalls how Hannibal for sixteen years maintained himself in Italy against the Romans, and, though scantily supplied from Carthage, recruited his ranks by the aid of Roman subjects. Truly does he say that every page of history teaches the same lesson, and proclaims in every different form, "How long shall these men be a snare unto us?"[2] — and also, "The remnant of these nations which thou shalt not drive out shall be pricks in thine eyes and thorns in thy side."[3]

Surely, Sir, this is enough, and more. From authentic documents, including the very muster-rolls of the Revolution, we learn the small contributions of men and the military weakness of the Southern States, particularly of South Carolina, as compared with the Northern States; and from the very lips of South Carolina her-

[1] Essays on Some of the Dangers to Christian Faith, pp. 214–216, note F, 2d edition. See also Bacon's Essays, with Annotations by Whately, pp. 127–130: Annotations to Essay XV.

[2] Exodus, x. 7. [3] Numbers, xxxiii. 55.

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self, on four different occasions, — by a Committee, by one of her Representatives in Congress, by her historian, and by an eminent citizen, — we have the confession, not only of weakness, but that this weakness was caused by Slavery. And yet, in the face of this combined and authoritative testimony, we are called to listen, in the American Senate, to the arrogant boast, from a venerable Senator, that American Independence was achieved by the arms and treasure of "slaveholding communities": an assumption baseless as the fabric of a vision, in any way it may be interpreted, — whether as meaning baldly that Independence was achieved by those Southern States, the peculiar home of Slavery, or that it was achieved by any strength or influence which came from that noxious source. Sir, I speak here for a Commonwealth of just renown, but I speak also for a cause which is more than any Commonwealth, even that which I represent; and I cannot allow the Senator to discredit either. Not by Slavery, but in spite of Slavery, was Independence achieved. Not *because*, but *notwithstanding*, there were "slaveholding communities," did triumph descend upon our arms. It was the inspiration of Liberty Universal that conducted us through the Red Sea of the Revolution, as it had already given to the Declaration of Independence its mighty tone, resounding through the ages. "Let it be remembered," said the Nation, speaking by the voice of the Continental Congress, at the close of the war, "that it has ever been the pride and boast of America, that the rights for which she contended were THE RIGHTS OF HUMAN NATURE."[1] Yes, Sir, in this behalf, and by this sign, we conquered.

[1] Address to the States, April 26, 1783: Journal of Congress, Vol. VIII. p. 201.

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Such, Sir, is my answer on this head to the Senator from South Carolina. If the work which I undertook has been done thoroughly, he must not blame me. Justice demanded that it should be thorough. But, while thus repelling insinuations against Massachusetts, and assumptions for Slavery, I would not unnecessarily touch the sensibilities of that Senator, or of the State which he represents. I cannot forget, that, amidst all diversities of opinion, we are bound together by ties of a common country, — that Massachusetts and South Carolina are sister States, and that the concord of sisters ought to prevail between them; but I am constrained to declare, that, throughout this debate, I have sought in vain any token of that just spirit which within the sphere of its influence is calculated to promote the concord whether of State or of individuals.

And now, for the present, I part with the venerable Senator from South Carolina. Pursuing his inconsistencies, and exposing them to judgment, I had almost forgotten his associate leader in the wanton personal assault upon me in this long debate, — I mean the veteran Senator from Virginia [Mr. MASON], who is now directly in my eye. With imperious look, and in the style of Sir Forcible Feeble, that Senator undertakes to call in question my statement, that the Fugitive Slave Act denies the writ of *Habeas Corpus;* and in doing this, he assumes a superiority for himself, which, permit me to tell him now in this presence, nothing in him can warrant. Sir, I claim little for myself; but I shrink in no respect from any comparison with that Senator, veteran though he be. Sitting near him, as has been my fortune since I had the honor of a seat in this cham-

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ber, I have come to know something of his conversation, something of his manners, something of his attainments, something of his abilities, something of his character, — ay, Sir, and something of *his* associations; and, while I would not disparage him in any of these respects, I feel that I do not exalt myself unduly, that I do not claim too much for the position which I hold or the name which I have established, when I openly declare, that, as Senator of Massachusetts, and as man, I place myself at every point in unhesitating comparison with that honorable assailant. And to his peremptory assertion, that the Fugitive Slave Act *does not* deny the *Habeas Corpus*, I oppose my assertion, peremptory as his own, that it *does*, — and there I leave that issue.

Mr. President, I welcome the sensibility which the Senator from Virginia manifests at the exposure of the Fugitive Slave Act. He is the author of that enormity. From his brain came forth the soulless monster. He is, therefore, its natural guardian. The Senator is, I believe, a lawyer. And now, since at last he shows parental solicitude to shield his offspring, he must do more than vainly parry the objection that it denies the great writ of *Habeas Corpus*. It is true, Sir, if anything but Slavery were in question, such an objection, if merely plausible, would be fatal; but it is not to be supposed that the partisans of an institution founded on denial of human rights can appreciate the proper efficacy of that writ. Sir, I challenge the Senator to defend his progeny, — not by assertion, but by reason. Let him rally all the ability, learning, and subtilty which he can command, and undertake the impossible work.

Let him answer this objection: The Constitution, by an amendment which Samuel Adams hailed as a protec-

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tion against the usurpations of the National Government, and which Jefferson asserted was its very "foundation," has solemnly declared that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Stronger words could not be employed to limit the powers under the Constitution, and to protect the people from all assumptions of the National Government, particularly in derogation of Freedom. By the Virginia Resolutions of 1798, which the Senator is reputed to accept, this limitation of the powers of the National Government is recognized and enforced. The Senator himself is understood, on all questions not affecting the claims of Slavery, to espouse this rule in its utmost strictness. Let him now indicate, if he can, any article, clause, phrase, or word in the Constitution which gives to Congress any power to establish a "uniform law throughout the United States" on the subject of fugitive slaves. Let him now show, if he can, from the records of the National Convention, one jot of evidence inclining to any such power. Whatever its interpretation in other respects, the clause on which this bill purports to be founded gives no such power. Sir, nothing can come out of nothing; and the Fugitive Slave Act is, therefore, without any source or origin in the Constitution. It is an open and unmitigated usurpation.

When the veteran Senator of Virginia has answered this objection, when he is able to find in the Constitution a power which is not to be found, and to make us see what is not to be seen, then let him answer another objection. The Constitution has secured the inestimable right of Trial by Jury "in suits at Common Law, where

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the value in controversy shall exceed twenty dollars." Of course Freedom is not susceptible of pecuniary valuation; therefore there can be no question that the claim for a fugitive slave is within this condition. In determining what is meant by "suits at Common Law," recourse must be had to the Common Law itself, precisely as we resort to that law in order to determine what is meant by "Trial by Jury." Let the Senator, if he be a lawyer, undertake to show that a claim for a fugitive slave is not, according to early precedents and writs, — well known to the framers of the Constitution, especially to Charles Cotesworth Pinckney and John Rutledge, of South Carolina, both of whom had studied law at the Temple, — a *suit at Common Law*, to which, under the solemn guaranty of the Constitution, is attached the Trial by Jury, as an inseparable incident. Let the Senator show this, if he can.

And, Sir, when the veteran Senator has found a power in the Constitution where none exists, and has set aside the right of Trial by Jury in a suit at Common Law, then let him answer yet another objection. By the judgment of the Supreme Court of the United States, a claim for a fugitive slave is declared to be *a case under the Constitution*,[1] within the judicial power; and this judgment of the Court is confirmed by common sense and Common Law. Let the Senator show, if he can, how such exalted exercise of judicial power can be confided to a single petty magistrate, appointed, not by the President, with the advice and consent of the Senate, but by the Court, — holding his office, not during good behavior, but merely during the will of the Court, — and receiving, not a regular salary, but fees according to

[1] Prigg v. Pennsylvania, 16 Peters, 616.

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each individual case. Let the Senator answer this objection, if, in any way, by twist of learning, logic, or law, he can.

Thus, Sir, do I present the issue directly on this monstrous enactment. Let the author of the Fugitive Slave Bill meet it. He will find me ready to follow him in argument, — though I trust never to be led, even by his example, into any departure from those courtesies of debate which are essential to the harmony of every legislative body.

Such, Mr. President, is my response to all that has been said in this debate, so far as I deem it in any way worthy of attention. To the two associate chieftains in this personal assault, the veteran Senator from Virginia, and the Senator from South Carolina with the silver-white locks, I have replied completely. It is true that others have joined in the cry which these associates first started; but I shall not be tempted further. Some there are best answered by silence, best answered by withholding the words which leap impulsively to the lips. [*Here Mr. Sumner turned to Mr. Mallory and Mr. Clay.*]

And now, giving to oblivion all these things, let me, as I close, dwell on a single aspect of this discussion, which will render it memorable. On former occasions like this, the right of petition has been vehemently assailed or practically denied. Only two years ago, memorials for the repeal of the Fugitive Slave Act, presented by me, were laid on your table, Mr. President, without reference to any Committee. All is changed now. Senators have condemned the memorial, and sounded in our ears the cry of "Treason! treason!" —

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but thus far, throughout this excited debate, no person has so completely outraged the spirit of our institutions, or forgotten himself, as to persevere in objecting to the reception of the memorial, and its proper reference. It is true, the remonstrants and their representatives here are treated with indignity; but the great right of petition, the sword and buckler of the citizen, though thus dishonored, is not denied. Here, Sir, is a triumph for Freedom.

When Mr. Sumner had finished, Mr. Clay, of Alabama, made haste to say, "He has put the question, whether any Senator upon this floor would assist in returning a fugitive slave? No response was made to the interrogatory; and lest he should herald it to the world that there was no Senator upon this floor who had the *moral courage* to say 'Ay,' in response to the interrogatory, I tell him that I would do it." To which Mr. Sumner replied at once, "Then let the Senator say the *immoral courage*."

Mr. Butler rose to reply, when Mr. Badger asked his "friend from South Carolina, whether it would not be better for him to allow us now to adjourn?" To which Mr. Butler answered: "No, Sir; I would not subject myself to the temptation of preparing a reply that might have something in it, that, like a hyena, I was scratching at the graves in Massachusetts, to take revenge for the elaborate and vindictive assault that has been made by the gentleman who has just spoken." The *Globe* shows his continued anger and excitement, which broke out especially at the comparison Mr. Sumner made between the Stamp Act and the Slave Act, and at his refusal to surrender a fugitive slave. These seemed to be the two grounds of offence. On the latter point, Mr. Butler, contrary to Mr. Sumner's positive declaration, was persistent in saying that he had denied the obligation of his oath to support the Constitution, when he had only denied his obligation to surrender a fugitive slave. At this stage, Mr. Fessenden, of Maine, remarked: "The answer made by the Senator from Massachusetts was in these precise words: 'I recognize no such obligation.' I did not understand that Senator as meaning to say that he would not obey the Constitution, or would disregard his oath, — nor, allow me to say, was he so understood by many gentlemen on this side of the chamber; but he simply meant to say (I certainly so understood him) that he did not con-

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sider that the Constitution imposed any such obligation upon him. That is all." Before the debate closed, Mr. Toucey, of Connecticut, said: "I beg leave to ask the Senator from Massachusetts whether he now recognizes an obligation to return a fugitive slave? I put the question in general language: Does he recognize the obligation to return a fugitive slave?" Mr. Sumner then said, "To that I answer distinctly, *No.*" The petition was then referred to the Committee.

As Mr. Sumner resumed his seat, after his speech in reply to his assailants, Mr. Chase, who sat next to him, said: "You have struck Slavery the strongest blow it ever received; you have made it reel to the centre." The rage of its representatives was without bounds. The suggestion of Mr. Pettit to expel him was the first idea, which at last gave way to that of Mr. Clay to put him in Coventry. The first was not abandoned at once. It was seriously entertained. The newspapers of the time represent that it was under consideration from the day of his speech, — that "the opposition to Mr. Sumner is general and bitter in the Senate, and that it would be rash, therefore, to assert that the resolution will not be presented, and that, if presented, it will not be carried." It was added, that four Northern Senators were pledged to the resolution. The *Evening Post* said, jestingly: "The Washington *Union*, and those of whom it is the special organ, are as much puzzled what to do with Senator Sumner as the Lilliputians were how to dispose of Mr. Lemuel Gulliver, when he made his appearance among them." Other papers treated the subject more gravely. The *National Era*, at Washington, said: "When we heard that a project for the expulsion of Mr. Sumner was under consideration among some Senators, we scouted the report as simply ridiculous; but there is no limit to the insolence and folly of some men. On inquiry, we learned that such a project was seriously canvassed."

This debate was profoundly felt throughout the country. Mr. Sumner's speech was telegraphed to the North, and extensively read. People there were smarting under the repeal of the Missouri Prohibition and the attempt to enforce the Fugitive Slave Act. They were glad to find the audacious pretensions of the slave-masters repelled in Congress. Newspapers were enthusiastic. The correspondent of the New York *Times* wrote: —

"This able, triumphant vindication, which covered the assailants with confusion, told with the more effect because it was unexpected. It had been supposed that Mr. Sumner would submit quietly to any indignity that might be heaped upon him; but the people, doubtless, when they read his

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speech, will acknowledge that he held in reserve, and knew when and how to use, weapons of defence far keener than the bowie-knife, and far more certain and fatal than the duellist's rifle; and his countrymen will honor the moral courage that enabled him to bear unflinchingly all the cruel taunts of his misreckoning assailants, until the time had arrived for drawing the arrows of Truth. . . . . I have not been accustomed to praise the Senator who is now my theme; but that heart must be cold, and that judgment lamentably distorted, which could withhold from Mr. Sumner his well-earned tribute for to-day's acquittance."

The Springfield *Republican* thus characterizes the speech: —

"Curiosity has been greatly stimulated to see it in full, and it will amply repay attention. Mr. Sumner has made more brilliant, classical, scholarly speeches, but never one more effective, nor one upon which his fame as Congressional debater can more creditably rest. It was a full vindication of himself and of Massachusetts, and its influence and effect have been marked at Washington. It ended the discussion which the South so vauntingly provoked. There has been no essay at reply. It carried the war into the bowels of his opponents in a manner not ordinarily excusable, but, after the provocation which had been given, in this instance most abundantly justifiable. His annihilation of his accusers was complete."

In a speech at Providence shortly afterwards, Mr. Giddings, of the House of Representatives, referred to this effort, which he heard, in sympathetic terms.

"They assailed Sumner because he said, 'Is thy servant a dog, that he should do this thing?' in reply to the question, whether he would assist in the capture of a fugitive slave? He was assailed by the whole Slave Power in the Senate, and for a time he was the constant theme of their vituperation. The maddened waves rolled and dashed against him for two or three days, until eventually he obtained the floor himself. Then he arose and threw back the dashing surges with a power of inimitable eloquence utterly indescribable. . . . . I assure you that last week was the proudest week I ever saw. Sumner stood inimitable, and hurled back the taunts of his assailants with irresistible force. There he stood towering above the infamous characters who had attempted to silence him, while I sat and listened with rapturous emotion."

The interest awakened by the conflict in the Senate and the part borne by Mr. Sumner can be understood only by reading the testimony of the time in private letters, which have additional value in the light of subsequent events. It will be seen how Mr. Sumner was supported, and what already was the sentiment of the North.

Letters came from unknown persons, saying, "I want to thank you for that speech." On the next day after its delivery Rev. Theodore Parker wrote: —

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"I never felt so proud of you as now, and can't go to bed without first thanking you for the noble words which Apthorp has just read me of yours from the *Transcript* of to-night. Even phlegmatic ——— is roused up with your fire. God bless you!"

Hon. John P. Hale, of the Senate, wrote from Dover, N. H., under date of July 3d: —

"As I came from Washington to this place, in New York, Boston, and in steamboats and railroad cars, I heard but one expression in regard to your speech, and that was of unmingled gratification. I have heard all classes, Whigs and others, and there is no exception. Ladies particularly are in ecstasies at it. Mrs. Hale says, 'Give him my thanks for his speech.' The feeling of gratification at your speech is so great, that people do not think, much less speak, of the Billingsgate by which you were assailed."

Hon. Henry Wilson thus expressed his feelings in a letter from Boston: —

"I write to say to you that you have given the heaviest blow you ever struck to the slaveholding oligarchy. All our friends are delighted, and men, who, even up to this hour have withheld all words of commendation, are proud of your speech, and loud in their commendations."

John A. Andrew, Esq., wrote: —

"Your recent rencontre with the wild beasts of Ephesus has been a brilliant success. I have regarded that debate with pride and gratification. I am glad it has occurred for many reasons, private and personal, as well as public and universal. And I have heard no person refer to it but in terms the most gratifying to my friendship for you, and my interest in the controversy itself. I think our friends here are in good spirits and full of hope.

"How do those people treat you now, since they have come to close quarters with you? I hope you will spare not. You had ample occasion, and now I hope you will keep up the war *aggressively*; never fail to attack them, in the right way, whenever they deserve it. The insolence of the presumption to stand between a man and his own conscientious interpretation of the Constitution, especially when they defiantly and every day dare everybody to tread on their coat-tails, at the price of treason and rebellion, under the name of '*disunion*,' is utterly unbearable.

"I only wish they *would* expel you, and Chase, and Gillette, — all three."

Wendell Phillips was most earnest, as follows: —

"The storm of letters of congratulation is perhaps lulled a little by this time, and you 'll have a moment's leisure to receive the admiring thanks of an old friend. Amid so much that was sad and dark at home, it has been delightful to sun one's self now and then in the glad noon of hope at Washington. The whole State is very proud of you just now. If your six years were out this next winter, I think you 'd be run in again without a competitor, and by a vote of all parties.

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"All your late efforts have been grand: see the benefit of being insulted. Your last richly merited the claim you made of being *thorough*. I liked and entirely approved the self-respect with which you put your own opinion side by side with the Virginian's and left it. You claimed not a tittle too much, and he deserved just that sort of treatment.

"If, amid such universal congratulation, it be any joy to you to hear my amen, be assured it is most heartily shouted."

Rev. Joshua Leavitt, the lifelong Abolitionist, wrote from New York:—

"I have just read the full report of your speech with intense satisfaction. It is a glorious work. The report, the echo, the effect in the other fleet, shows that it was such a broadside as they never had before."

John Jay wrote from Bedford, New York, the country home of his grandfather, the Chief Justice:—

"I have read your speech of the 28th June with, I think, more thorough satisfaction and delight than any other in my life, not excepting even your first speech on the Fugitive Bill, for which I waited so impatiently, as your first great blow in the Senate against American Slavery. Your last is a glorious, a most triumphant effort, and has given you a proud and commanding position before the country, as the long hoped-for Champion of the North, before whose fearless front and avenging arm Southern insolence at length shall quail. How the Free States will receive your words is already clear, if doubt could have been entertained of it, by the tone generally of the public press, and the delight manifested, both in the town and country, by almost all who speak of it. In our quiet neighborhood I find people talking of it enthusiastically whom I never before heard express the slightest feeling on the Slavery question."

Rev. Convers Francis, the eminent professor of Harvard University, wrote:—

"When I came to that answer of yours, 'Is thy servant a dog, that he should do this thing?' I could not but cry out, 'That is just the thing! Mr. Sumner could not have found in all literature or history elsewhere so fitting words for reply, when he was asked whether he would send back a slave.' And your admirable application of Jefferson's description of the manners produced by Slavery did my very heart good. I have heard but one opinion of these speeches from every side: indeed, there can be but one,—that which expresses unmingled admiration and delight."

Dr. Joseph Sargent, of Worcester, wrote:—

"You must allow me to thank you for your reply to the assaults of Mr. Pettit and Mr. Clay. It is a personal matter with me, and all of us; for we have felt ourselves insulted, and we are satisfied. I have read all your speeches in the Senate with instruction and gratification; but this has

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warmed me so that I cannot withhold my thanks, though I trespass on your time. The whole community feels as I do. Men stop their business to ask each other if they have read Mr. Sumner's speech, and even men calling on me to visit their sick families forget their errand till they have put the universal question. We have hitherto admired your forbearance, but your reply is as dignified and noble as your forbearance, while it is strong, rich, and Saxon. We have had nothing like it since the Hülsemann letter. I will say no more, but I could say no less."

Theophilus P. Chandler, Esq., of Boston, wrote: —

"I cannot express the pleasure your friends have enjoyed at the result of the late Senatorial conflict. Old Fogies read your speech with satisfaction, although some complain of the Jackson doctrine."

Count Gurowski wrote from Newport: —

"You showed what is the real backbone of a gentleman, considered in the higher moral or philosophical point of view, by far superior to what your assailers conceive or are able to imagine in their vulgar or low conceptions."

Rev. William H. Furness, the distinguished divine and devoted Abolitionist, wrote: —

"I congratulate you upon having been blackguarded and denounced. It has redounded to your honor. It has proved a rare success. I think you should thank God for placing you, in his wise Providence, in a position which, utterly hateful as it must be to you (fighting with wild beasts at Ephesus), proves to furnish occasion for the heroic element. I can dimly surmise how much it costs you to stand there; but I doubt not the experience you are having testifies that it will pay the cost, and a great deal more. I may be mistaken, but, from all I have learned of your position in the Senate, things look as if those Southern men, after trying to steal your sting away by all sorts of courtliness and courtesy, and trying in vain, have turned upon you like rabid dogs, with the intent to tear you in pieces. They have not done it, nor will they."

Hiram Barney, Esq., of New York, wrote: —

"I congratulate you on that day's work. It was well and nobly done. I have seen something of your assailants, and know something of their habits and manners, and can appreciate your forbearance. It is a shame that you should be obliged to meet so much that is disgusting to the taste and shocking to the moral sense in the American Senate. But it is a matter of just pride that the friends of Freedom there are gentlemen, and always win upon the field of argument."

William C. Russell, Esq., of New York, afterwards professor at Cornell University, wrote: —

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"I am delighted beyond measure by your reply to the Southern chivalry. It is grand, gentlemanly, cool, pointed, well aimed, and true metal. I do not wonder that Mr. Butler did not want to play vampire to Massachusetts. The fact is, it is getting to be rather serious work to interfere with the old Commonwealth; and I shall be surprised, if the Southern bull-dogs do not bay in some other quarter."

Hon. Charles P. Huntington, of Northampton, afterwards Judge of the Superior Court of the County of Suffolk, wrote: —

"I have been, as usual, exceedingly gratified with the manner, style, and spirit in which you have met your Senatorial responsibilities on this trying Nebraska question. But the reply to the personal attacks and insults of Butler and Mason last week has gratified me more than anything that has fallen from your lips, — so severe, yet so just, — so cutting, yet so keen and polished, — so decided, manly, and bold, — so indicative of backbone, as well as pith and marrow, that your adversaries were fairly hung up and impaled."

Hon. Charles G. Loring, the eminent lawyer, wrote: —

"Your reply to the Southern gentlemen, who seem to think that a Northern man must be craven, elicited general and great admiration. I heartily enjoyed it, and think that Mr. Mason must have had at least one experience in his life of the comfort of being squeezed through the little end of the horn. You will doubtless be treated with some consideration by these worthies hereafter. In what school of blackguardism was Clay of Alabama graduated? He certainly is a magnificent specimen of Southern chivalry. You would have great reason to thank him for placing you in Coventry, at a distance beyond hailing from him and his compeers."

Andrew Ritchie, Esq., of Boston, wrote: —

"These gentlemen have been unfortunate in attacking you. You have punished them in a most exemplary manner, without descending to their vulgar level. You have exposed their ignorance of our Revolutionary history, vindicated the character of your own State, and brought forward, to their utter confusion, their own General Jackson, to justify your remark that you would not voluntarily do anything to promote the execution of what you deemed an unconstitutional law. In a word, you have taught these orators how much more effective is a *caustic civility* of reply than coarse, intemperate reviling."

Hon. S. E. Sewall, the constant Abolitionist, of Boston, wrote: —

"It is hardly necessary for me to tell you, what you probably see in the newspapers, that you have become one of the most popular men in Massachusetts. Even the Whigs are beginning to find out that you have maintained the character of the State far better than their own Senator.

"I suppose the idea of expelling you from the Senate, which was reported in the papers some weeks ago, could never have been seriously entertained.

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But the mere suggestion of such an outrage roused many men who had never been your political friends; for everybody felt that to attempt such an act would be an indignity to the State not to be tolerated.

"I find that I have left to the end of my letter, what I meant to have said in the beginning, that all your friends are delighted with your course in Congress under the very trying circumstances of the present session. We all agree that you have fought a good fight."

William I. Bowditch, Esq., of Boston, communicated the following incident: —

"One gentleman whom I saw this forenoon said that he involuntarily gave three cheers, when he had finished reading your speech; and an 'old Hunker' said to me smilingly, 'I really don't know but that I shall myself come out at last a Sumner man.'"

Dr. James W. Stone, an indefatigable member of the Free-Soil party, wrote: —

"But I should not only fail to express my own feelings, but also the universal satisfaction here evinced, did I long delay to tell you, even if I have time to do nothing more, how great the enthusiasm is in your behalf, for your noble reply to the unworthy assaults from Pettit, whose name is more significant of his mental than of his physical calibre, from Butler the faithless, and from Clay the slave-hunter, *et id omne genus*. I doubt whether even you can repress the enthusiasm which so earnestly demands a public reception for you on your return home."

Hon. Benjamin F. Butler, afterwards General, and Representative in Congress, wrote: —

"My interest in the subject of the speeches procured me the reports while they were being delivered. At that time I was at Concord, in court, seeing people of all parties; and I can assure you, from observation, that your course in the Senate is sanctioned by the approving sentiment of Massachusetts."

Robert Carter, Esq., the journalist and writer, wrote from Cambridge: —

"A month ago I thought your popularity had reached a wonderfully high pitch, that you had at a leap overcome prejudices and misconceptions that seemed likely to be surmounted only by the gradual toil of years. But the last week has wrought even greater wonders. Multitudes, formerly your enemies and revilers, are not merely willing to tolerate you, not merely willing to be satisfied with you, but have become actually proud of you, as their representative, and the champion of Massachusetts and the North. I hear on all sides nothing but commendations and exultations."

John C. Dodge, Esq., of Boston, wrote: —

"I rejoice that Massachusetts has found a defender who will, without fear

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or favor, tell the whole truth, when she is assailed. And I assure you that such is the voice of nearly our whole community. Whigs, Democrats, and Free-Soilers unite in the expression of approbation and pleasure."

Hon. Albert G. Browne, of Salem, wrote : —

"Let me say seriously, frankly, your reputation as a fearless, brave, and true man is firmly established, — confidence also in your discretion and good judgment, as shown in this last debate and in the management of this whole affair. There is a settled conviction that you know how to withstand the entreaties or coolness of friends, when your thoughts are not their thoughts, — that you have shown great moral and physical courage, united with admirable ability, in meeting and discomfiting the foes of Freedom, when, in your opinion, the right time had come."

Professor Edward T. Channing, of Harvard University, whose memory is dear to a large circle of pupils, wrote to a friend : —

"Sumner has done nobly. He is erect and a man of authority among the slave holders, dealers, and hunters. He has made an historical era for the North; for at least one among us has dared to confront the insolent. He makes cowards of them, or rather shows what cowards they are at the South. So will it ever be, when the Truth is bold; though it is rare for a young or old hero in politics to produce effect so rapidly. Still, and notwithstanding, and nevertheless, our Whigs would send Apollyon to the Senate as soon as Sumner, if his term should expire when they are uppermost."

T. C. Connolly, Esq., under date of August 21, reported from Washington the opinion of Mr. Gales, the very able editor of the *National Intelligencer*.

"I rejoice in the assurance universally felt here, that your position in the Senate will be far more pleasant in the future than it has been in the past. I enjoyed the pleasure of a conversation with Mr. Gales on this subject a few days since. He introduced your name, and remarked that the absence of sympathy in your views could not influence his fair judgment of your worth. He was an attentive reader of the debates of the Senate, and he had seen that every step you had taken was a step upward, and that they who had affected to contemn were at length driven into a tacit acknowledgment of their very great error. He spoke in particular of the reproofs you had found it necessary to administer to Senators around you, and said, that, while they were exceedingly severe and effective, they were equally just, and unaccompanied by a single word that could be regarded as incompatible with the place and presence in which you stood."

Men particularly interested in the Peace Cause united in the prevailing sentiment.

Of these, Hon. Amasa Walker, afterwards a Representative in Congress from Massachusetts, wrote : —

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"Your reply to the slaveholders is capital, and receives universal admiration in this quarter. It was just such a flagellation as the slavocrats deserved, and such a one as they never received before in the Senate. I think, from what I can observe, that your course is universally popular, always excepting the mercenary minions of the Government."

J. P. Blanchard, Esq., devoted to Peace, wrote: —

"I take this occasion to express my warm admiration of the spirit and power you have exhibited in your late contest with Messrs. Butler, Pettit, *et id genus omne*. I am rejoiced and grateful that your 'backbone' has proved strong enough to stand such a test without bending: that I have not given you this acknowledgment earlier is because, being very busy, I did not take time to write a letter for that purpose only, as I knew you were so well acquainted with my sympathies that the expression of them was unnecessary. I am glad to understand that you have received commendations on this score from sources where a short time ago you would not have expected them."

Elihu Burritt, the Missionary of Peace, wrote: —

"And now I want to thank you with my whole heart for your grand and brave rejoinder to Butler and Mason. It was the best, bravest thing done in the Senate this many a year. I think more hearts in the Free States will glory in your courageous and overwhelming reply to these plantation Senators than in any public effort of your life. You must have made it, too, on short notice. I never read anything with more satisfaction."

Other letters attest a change in sentiment among those who had been lukewarm on Slavery, and perhaps adverse to Mr. Sumner.

Hon. Daniel Shattuck, of Concord, wrote: —

"Being one of the old-time Whigs, I was not pleased with your election to the high seat which you hold: for that opinion you will forgive me, I am sure, when I say that I go with you now heart and soul, and approve all you have said in defence of your native State, whose sons I know approve your course and wish you God-speed."

George M. Browne, Esq., of Boston, wrote: —

"Differing with you as I do in political sentiments, and having no other connection with public affairs than what pertains to every citizen, I desire nevertheless to express to you, what I believe to be the general feeling among all classes of reflecting minds here, an admiration for the dignified and gentlemanly bearing with which you have gone through the contest and rebuked the ruffian onslaught, — and to say, moreover, that we should, I have no doubt, all unite, from all sides, as one man, in sending you back to the Senate, should the maniac threats of expulsion by any possibility be carried into effect."

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The following poem, suggested by this debate, belongs to this history.

TO C. S.

I have seemed more prompt to censure wrong
Than praise the right, — if seldom to thine ear
My voice hath mingled with the exultant cheer
Borne upon all our Northern winds along, —
If I have failed to join the fickle throng
In wide-eyed wonder that thou standest strong
In victory, surprised in thee to find
Brougham's scathing power with Canning's grace combined, —
That he, for whom the ninefold Muses sang,
From their twined arms a giant athlete sprang,
Barbing the arrows of his native tongue
With the spent shafts Latona's archer flung,
To smite the Python of our land and time,
Fell as the monster born of Crissa's slime,
Like the blind bard who in Castalian springs
Tempered the steel that clove the crest of kings,
And on the shrine of England's freedom laid
The gifts of Cumæ and of Delphi's shade, —
Small need hast thou of words of praise from me.
Thou knowest my heart, dear friend, and well canst guess,
That, even though silent, I have not the less
Rejoiced to see thy actual life agree
With the large future which I shaped for thee,
When, years ago, beside the summer sea,
White in the moon, we saw the long waves fall
Baffled and broken from the rocky wall,
That to the menace of the brawling flood
Opposed alone its massive quietude,
Calm as a fate, with not a leaf nor vine
Nor birch-spray trembling in the still moonshine,
Crowning it like God's peace. I sometimes think
That night-scene by the sea prophetical,
(For Nature speaks in symbols and in signs,
And through her pictures human fate divines,) —
That rock, wherefrom we saw the billows sink
In murmuring rout, uprising clear and tall
In the white light of heaven, the type of one
Who, momently by Error's host assailed,
Stands strong as Truth, in greaves of granite mailed,
And, tranquil-fronted, listening over all
The tumult, hears the angels say, Well done!

J. G. W.

11th month, 25th, 1854.

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PEACEFUL OPPOSITION TO THE FUGITIVE SLAVE ACT.

LETTER TO THE MAYOR OF BOSTON, FOR THE CELEBRATION JULY 4, 1854.

SENATE CHAMBER, 1st July, 1854.

DEAR SIR, — I have been honored by the invitation of the municipal authorities of Boston to unite with them in commemorating the approaching anniversary of our National Independence.

Please tender to them my gratitude, that they have thus remembered me, an absent citizen, who tries to serve truth and justice in the sphere where he has been placed. Pleasure would take me home among congenial souls, but duty keeps me here.

The approaching anniversary of Independence in Boston should be something more than a show and expense. It ought to be the occasion of a practical vow to those primal principles of Freedom which have been assailed. Our municipal history should be carefully read, and, unless we are prepared to disown our fathers, the conduct of Boston at memorable times should be set forward anew, as an example which her children must never forget. I do not refer to the violent act by which her harbor was converted into a "teapot"; but I would especially dwell on the peaceful opposition, which, according to her own records, now preserved at the City Hall, she organized against a tyrannical and unconstitu-

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tional Act of Parliament, — "bearing testimony against outrageous tumults and illegal proceedings," but never failing to "take legal and warrantable measures to prevent that misfortune, of all others the most to be dreaded, the execution of the Stamp Act." The City Clerk will find these words in his books, under date of 24th March, 1766, whence I have with my own hand copied them. With this great precedent of Freedom in my memory, I ask the municipal authorities — should I be remembered at their hospitable board — to propose in my name the following sentiment.

The City of Boston. — While still in colonial dependence, and with no aim at revolution, her municipal fathers steadfastly opposed the execution, within her borders, of an unconstitutional and tyrannical Act of Parliament, until, without violence or collision, it was at first practically annulled, and at last repealed. Truly honoring the Fathers, let Boston not depart from their example.

I remain, dear Sir, your faithful servant,

CHARLES SUMNER.

TO THE MAYOR OF BOSTON.

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NO PENSION FOR SERVICE IN SUPPORT OF THE FUGITIVE SLAVE ACT.

MINORITY REPORT TO THE SENATE OF THE UNITED STATES, ON THE BILL GRANTING TO THE WIDOW OF JAMES BATCHELDER A PROVISION FOR HER FUTURE SUPPORT, JULY 13, 1854.

AN attempt was made to obtain a pension for the widow of James Batchelder, killed in Boston, while guarding Anthony Burns, the fugitive slave, on the evening of May 26, 1854. A bill was reported from the Committee on Pensions. Mr. Sumner and Mr. Seward, constituting a minority of the Committee, made the following adverse report, which was drawn up by the former.

VIEWS OF MR. SUMNER AND MR. SEWARD.

THE undersigned, a minority of the Committee on Pensions, cannot concur with the majority of the Committee in reporting a bill for the relief of the widow of the late James Batchelder. They also dissent from the report accompanying the bill, which, however, is understood not to proceed from a majority of the Committee.

In granting pensions, or bounties of a kindred nature, it has been the habit of the Committee to require evidence of all essential facts and circumstances, — not, indeed, according to the rigorous forms of a court of law, but with substantial fulness and authenticity. Applications for pensions are constantly rejected for de-

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fect of testimony. But this reasonable practice, which is a necessary safeguard against abuse, has been disregarded in the present case. No evidence of any kind — not a shred or particle — was produced. The majority of the Committee undertook to act at once, on loose and general report, gathered from the public press at a moment of excitement. In this report they have obviously proceeded with more haste than discretion. Such a course cannot be in conformity with approved precedents. In itself it will be a bad precedent for the future.

But this proceeding seems more obnoxious to comment, when it is known that it appears, from the very sources on which the Committee relied, that the facts in question are all at this moment the subject of judicial inquiry, *still pending*, in the courts at Boston. Several citizens have been indicted for participation in the transaction to which reference is made, and in which Batchelder is said to have been killed. Their trials have not yet taken place, but are near at hand. Under these peculiar circumstances, the indiscreet haste of the Committee, thus acting in advance of authentic evidence, and *lite pendente*, is enhanced by possible detriment to the grave interests of justice, which all will admit should not be exposed to partisan influence from abroad. The report accompanying the bill, without any aid from human testimony, undertakes to pronounce dogmatically on facts which will be in issue on these trials. Anticipating the court, and literally without a hearing, it gives judgment on absent persons, as well as on distant events.

On grounds irrespective of the merits of the case, the undersigned object to any action upon it on the pres-

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ent evidence, and in the existing state of things. They object for two reasons: *first*, that such action would become a bad precedent, opening the way to a disregard of evidence in the distribution of pensions and bounties; and, *secondly*, that it would be an interference — offensive, though indirect — with the administration of justice, in matters *still pending*, and involving the fortunes of several citizens. These reasons are ample.

But on other grounds, of a different character, and vital to the merits of the case, the undersigned must dissent from the majority of the Committee.

Regarding the Act of Congress usually known as the Fugitive Slave Act as unconstitutional, while it is justly condemned by the moral sense of the communities where it is sought to be enforced, the undersigned are not disposed to recognize any services rendered in its enforcement as meritorious in character. Especially are they unwilling to depart beyond the clear line of precedent, in voting bounties on account of such services. This of itself is sufficient reason for opposition to the proposed bill.

But admitting for the moment the asserted constitutionality of the Fugitive Slave Act, and its conformity with just principles of duty, and admitting further, that efforts for its enforcement are to be placed in the same scale with efforts to enforce other Acts of Congress, of acknowledged constitutionality, and clear conformity with just principles of duty, then the undersigned beg leave to submit, that, according to the practice of our country, such efforts have not been considered as entitled to the ordinary reward of pensions or kindred bounties.

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The pensions and kindred bounties of our country have been founded exclusively on *military* and *naval* services. In England, *civil* services, whether on the bench, in diplomacy, or in the departments of State, are subjects of pension; but it is otherwise here. With us there are no general laws to this end; nor are there special laws of such clear meaning and character as to become precedents, sanctioning pensions or bounties for civil service. A report of this Committee, made by its Chairman at this very session of Congress, states the rule and practice of Congress. Here is the whole report.

"IN THE SENATE OF THE UNITED STATES.

"APRIL 11, 1854. — Ordered to be printed.

"Mr. JONES, of Iowa, made the following report.

"*The Committee on Pensions, to whom was referred the petition of Rebecca Bright, beg leave to report:* —

"That the petitioner is the widow of Jacob Bright, an armorer, who was killed at the navy-yard in this city by the bursting of a shell. *He being an employee of the Government, and in no sense to be regarded as in its 'military or naval service,' the Committee can find no reason, founded in law or justice, for pensioning his widow.* Her case is precisely that of the widow of a laborer or mechanic employed by the day or month upon any public work. They therefore recommend that the prayer of the petitioner be rejected."[1]

And yet, in the very teeth of this recommendation, made by themselves at this very session, the Committee now propose to bestow a bounty upon such services. If the Committee were right in their former report, they cannot be right now.

[1] Reports of the Committees of the Senate, 33d Cong. 1st Sess., No. 199.

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The report accompanying the bill shows that three of the Committee have felt that their recommendation needed the support of precedents, and they have ransacked the records for them. Two only are produced.

The first is an Act of Congress, bearing date June 7, 1794, which provides "that the sum of two thousand dollars be allowed to the widow of Robert Forsyth, late marshal of the district of Georgia, for the use of herself and the children of the said Robert Forsyth." On search in the office of the Secretary of the Senate, where this bill originated, and also at the Treasury, where the money was paid, no papers have been found showing the occasion of this grant; nor has anybody undertaken to state any. This precedent, then, can be of little value in establishing an important rule in the dispensation of national bounties.

The only other precedent adduced by the Committee is an Act bearing date May 8, 1820, providing "that the Postmaster-General be, and he hereby is, authorized and directed to pay to the widow of John Heaps, late of the city of Baltimore, — who, while employed as a carrier of the mail of the United States, and having the said mail in his custody, was beset by ruffians and murdered, — out of the money belonging to the United States, arising from the postage of letters and packets, five hundred dollars in ten equal semiannual payments." On this precedent Congress will surely hesitate to establish a rule which will open a new drain upon the country.

The general laws do not award pensions or bounties for services in enforcing the revenue laws of the country; and it is not known that any special acts have ever been passed rewarding such services,

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though they have often been rendered at imminent danger to life, as well from shipwreck as from the violence of smugglers. The proposed bill will be an apt precedent for bounty in this large class of cases; and it may properly be opposed by all who are not ready for a new batch of claimants.

The undersigned venture to make a single comment further on the report accompanying the bill. This report, not content with assigning reasons for its proposed bounty, proceeds to take cognizance of the conduct of the people of Massachusetts, the citizens, the soldiers, the marshal and his deputies, the mayor and police of Boston, in the recent transaction, and assumes to hold the scales of judgment. In this respect it evinces an indiscreet haste, similar to that already displayed in acting on the present proposition, without authentic evidence, and during the pendency of judicial investigations. It appears from the public journals, out of which all our information on this matter is derived, that the conduct of several public functionaries, on this occasion, in Massachusetts, has been seriously drawn in question. The marshal of the district is openly charged with making the arrest of the alleged fugitive under the fraudulent pretence that he was a criminal, — a scandalous device, which no honest man can regard without reprobation. The mayor of Boston is also openly charged with violation of the primal principles of free institutions and of the law of the land, in surrendering the city for the time being into the possession of a military force, and thus establishing there that supremacy of arms under which all law is silent. But on these things the undersigned express no opinion. They desire only to withhold all assent from the blindfold ratification which the

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report accompanying the bill volunteers, without reason or occasion, to the conduct of public functionaries, as well as of others, who, according to some evidence, may have acted very badly.

CHARLES SUMNER.
WILLIAM H. SEWARD.

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JAMES OTIS AN EXAMPLE TO MASSACHUSETTS.

LETTER TO THE CAPE COD ASSOCIATION OF MASSACHUSETTS, JULY 30, 1854.

HERE, again, is an effort against the enforcement of the Fugitive Slave Act.

SENATE CHAMBER, July 30, 1854.

DEAR SIR, — I have been honored by the Cape Cod Association with an invitation to unite with them in their approaching festival at Yarmouth.

Amidst these unprecedented heats it is pleasant merely to think of the seaside; much pleasanter would it be to taste for a day its salt, refreshing air, especially with cherished friends, and stirred by historical memories, in these times bracing to the soul. But my duties will keep me here.

In that part of Massachusetts to which you invite me was born James Otis, one of our immortal names. He early saw the beauty of Liberty, and in those struggles which preceded the Revolution gave his eloquent tongue to her support. To the tyrannical *Writs of Assistance*, offspring of sovereign power, and at that day regarded as constitutional, he offered inflexible resistance, saying, "I will to my dying day oppose, with all the powers and faculties God has given me, all such instruments of slavery on the one hand and villany on the other. I cheerfully submit myself to every odious name for conscience' sake. Let the consequences be what they will,

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I am determined to proceed." And then again he declared of this outrageous process, "It is a power that places the liberty of every man in the hands of every petty officer." With this precision he struck at an engine of tyranny, and with fervid eloquence exposed it to mankind. Such a character should not be forgotten at your commemoration. Were I there, I might ask leave to propose the following sentiment.

The memory of James Otis, of Barnstable, the early orator of American Liberty. — Massachusetts cherishes the fame of her patriot child. Let her also imitate his virtues.

I remain, dear Sir, very faithfully yours,

CHARLES SUMNER.

TO THE CHAIRMAN OF THE COMMITTEE.

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STRUGGLE FOR REPEAL OF THE FUGITIVE SLAVE ACT.

DEBATE IN THE SENATE, JULY 31, 1854.

ALL efforts of the friends of Freedom in Congress encountered opposition at every stage. Attempts by John Quincy Adams to present petitions were thwarted in every way that vindictive rage could prompt. Propositions for the repeal of obnoxious laws sustaining Slavery were stifled. To accomplish this result, parliamentary courtesy and parliamentary law were both set at defiance. On a former occasion,[1] when Mr. Sumner brought forward his motion for the repeal of the Fugitive Slave Act, he was refused a hearing, and obtained it only by taking advantage of the Civil and Diplomatic Appropriation Bill, and moving an amendment to it, which no parliamentary subtlety or audacity could declare to be out of order. On the presentation of petitions against the Fugitive Slave Act, from time to time, he was met by similar checks. Meanwhile anything for Slavery was always in order. An experience of a single day will show something of this.

On the 31st of July, 1854, Mr. Seward, of New York, under instructions from the Committee on Pensions, reported a bill, which had already passed the House of Representatives, for the relief of Betsey Nash, a poor and aged woman, whose husband had died of wounds received in the war of 1812, and asked for its immediate consideration. This simple measure, demanded by obvious justice, was at once embarrassed by an incongruous proposition for the support of Slavery. Mr. Adams, of Mississippi, moved, as an amendment, another bill, for the relief of Mrs. Batchelder, widow of a person killed in Boston, while aiding as a volunteer in the enforcement of the Fugitive Slave Act. In the face of various objections this amendment was adopted. Mr. Sumner at once followed by a proposition in the following words: —

"*Provided*, That the Act of Congress, approved September 18, 1850, for the surrender of fugitives from service or labor, be, and the same is hereby, repealed."

[1] See *ante*, p. 80.

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This was ruled out of order, as "not germane to the bill under consideration"; and the two bills, hitched together, — one for a military pension, and the other for contribution to the widow of a Slave-Hunter, — were put on their passage. Mr. Sumner then sprang for the floor, when a struggle ensued, which is minutely reported in the *Congressional Globe*. The careful reader will observe, that, in order to cut off an effort to repeal the Fugitive Slave Act, at least two unquestionable rules of parliamentary law were overturned.

MR. SUMNER. In pursuance of notice, I now ask leave to introduce a bill.

MR. STUART (of Michigan). I object to it, and move to take up the River and Harbor Bill.

THE PRESIDING OFFICER (MR. COOPER, of Pennsylvania). The other bill is not disposed of. The third reading of a Bill for the relief of Betsey Nash.

The bill was then read a third time and passed.

MR. SUMNER. In pursuance of notice, I ask leave to introduce a bill, which I now send to the table.

MR. STUART. Is that in order?

MR. SUMNER. Why not?

MR. BENJAMIN (of Louisiana). There is a pending motion of the Senator from Michigan to take up the River and Harbor Bill.

THE PRESIDING OFFICER. That motion was not entertained, because the Senator from Massachusetts had and has the floor.

MR. STUART. I make the motion now.

THE PRESIDING OFFICER. The Chair thinks it is in order to give the notice.

MR. SUMNER. Notice has been given, and I now, in pursuance of notice, introduce the bill. The question is on its first reading.

THE PRESIDING OFFICER. The first reading of a bill.

MR. NORRIS (of New Hampshire). I rise to a question of order.

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MR. SUMNER. I believe I have the floor.

MR. NORRIS. But I rise to a question of order. I submit that that is not the question. The Senator from Massachusetts has given notice that he would ask leave to introduce a bill. He now asks that leave. If there be objection, the question must be decided by the Senate whether he shall have leave or not. Objection is made, and the bill cannot be read.

MR. SUMNER. Very well; the first question, then, is on granting leave, and the title of the bill will be read.

THE PRESIDING OFFICER (to the Secretary). Read the title.

The Secretary read it as follows: "A Bill to repeal the Act of Congress approved September 18, 1850, for the surrender of fugitives from service or labor."

THE PRESIDING OFFICER. The question is on granting leave to introduce the bill.

MR. SUMNER. And I have the floor.

THE PRESIDING OFFICER. The Senator from Massachusetts is entitled to the floor.

MR. SUMNER. I shall not occupy much time, nor shall I debate the bill. Some time ago, Mr. President, after the presentation of the Memorial from Boston, signed by twenty-nine hundred citizens without distinction of party, I gave notice that I should, at a day thereafter, ask leave to introduce a bill for the repeal of the Fugitive Slave Act. Desirous, however, not to proceed prematurely, I awaited the action of the Committee on the Judiciary, to which the Memorial, and others of a similar character, were referred. At length an adverse report was made, and accepted by the Senate. From the time of that report down to this moment, I have sought an opportunity to introduce this

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bill. Now, at last, I have it. At a former session, Sir, in introducing a similar proposition, I considered it at length, in an argument which I fearlessly assert ——

MR. GWIN (of California). I rise to a point of order. Has the Senator a right to debate the question, or say anything on it, until leave be granted?

THE PRESIDING OFFICER. My impression is that the question is not debatable.[1]

MR. SUMNER. I propose simply to explain my bill, — to make a statement, not an argument.

MR. GWIN. I make the point of order.

THE PRESIDING OFFICER. I am not aware precisely what the rule of order on the subject is; but I have the impression that the Senator cannot debate ——

MR. SUMNER. The distinction is this ——

MR. GWIN. I insist upon the application of the decision of the Chair.

MR. MASON (of Virginia). Mr. President, there is one rule of order that is undoubted: that, when the Chair is stating a question of order, he must not be interrupted by a Senator. There is no question about that rule of order.

THE PRESIDING OFFICER. The Senator did not interrupt the Chair.

MR. SUMNER. The Chair does me justice in response to the injustice of the Senator from Virginia.

THE PRESIDING OFFICER. Order! order!

MR. MASON. The Senator is doing that very thing at this moment. I am endeavoring to sustain the authority of the Chair, which certainly has been violated.

[1] Nothing is clearer, under the rules of the Senate, than that Mr. Sumner was in order, when, on introducing his bill, he proceeded to state the causes for doing it.

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THE PRESIDING OFFICER. It is the opinion of the Chair that the debate is out of order. I am not precisely informed of what the rule is; but such is my clear impression.

MR. WALKER (of Wisconsin). If the Senator from Massachusetts will allow me, I will say a word here.

MR. SUMNER. Certainly.

MR. WALKER. It is usual, upon notice being given of intention, to ask leave to introduce a bill. The bill is sent to the Chair, and it is taken as a matter of course that the Senator asking it has leave. But in this instance, differing from the usual practice, objection has been made to leave being granted. The necessity is imposed, then, of taking the sense of the Senate on granting leave to the Senator to introduce his bill. That, then, becomes the question. The question for the Chair to put is, Shall the Senator have leave?

THE PRESIDING OFFICER. That was the question proposed.

MR. WALKER. Now, Sir, it does seem to me that it is proper, and that it is in order, for the Senator to address himself to the Senate, with the view of showing the propriety of granting the leave asked for. He has a right to show that there would be propriety on the part of the Senate in granting the leave. I think, therefore, as this may become a precedent in future in regard to other matters, that it should be settled with some degree of deliberation.

MR. GWIN. Let the Chair decide the question.

THE PRESIDING OFFICER. The Chair has decided that debate was not in order, in his opinion.

MR. SUMNER. From that decision of the Chair I most respectfully take an appeal.

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THE PRESIDING OFFICER. From that ruling of the Chair an appeal is taken by the Senator from Massachusetts. The question is on the appeal.

MR. BENJAMIN. In order to put a stop to the whole debate, I move to lay the appeal on the table. That is a motion which is not debatable.

MR. SUMNER. Is that motion in order?

THE PRESIDING OFFICER. Certainly it is in order.[1]

MR. WELLER (of California). I desire to make one remark in regard to the rule.

THE PRESIDING OFFICER. It is not in order now. The question must be taken without debate.

MR. SUMNER. Allow me to state the case as it seems to me. I was on the floor, and yielded it to the Senator from Wisconsin strictly for the purpose of an explanation. When he finished, I was in possession of the floor; and then it was that the Senator from Louisiana, on my right ——

THE PRESIDING OFFICER. Will the Senator from Massachusetts give leave to the Chair to explain?

MR. SUMNER. Certainly.

THE PRESIDING OFFICER. A point of order was made by the Senator from California [Mr. GWIN], that debate was not in order upon the question of granting leave; and the Chair so decided. The Senator from Massachusetts then lost the floor, as I apprehend, and he certainly did by following it up by an appeal. After that he could go no further. He lost the floor then again for a second time, and then it was that the Senator from Louis-

[1] The motion was clearly out of order: first, because in the Senate an appeal from the decision of the Chair on a question of order cannot be laid on the table; and, secondly, because Mr Sumner was already on the floor, so that Mr. Benjamin could not make a motion.

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iana intervened with another motion, which is certainly in order, to lay the appeal on the table. That is not debatable. This, it seems to me, is the state of the case.

MR. CHASE (of Ohio). Will the Chair allow me to make a single statement?

THE PRESIDING OFFICER. Certainly.

MR. CHASE. The Senator from Massachusetts rose and held the floor during the suggestion made to the Chair by the Senator from Wisconsin. The Chair then, after the Senator from Wisconsin had finished his suggestion, declared his opinion to be, notwithstanding the suggestion, that debate was not in order. The Senator from Massachusetts then took an appeal, and retained the floor for the purpose of addressing the Senate on that appeal. While he occupied the floor, the Senator from Louisiana rose and moved to lay the appeal upon the table. That will be borne out by the gentlemen present.

THE PRESIDING OFFICER. That is so; but the Chair does not understand that debate was in order on the appeal. The appeal was to be decided without debate, and therefore the Senator from Massachusetts necessarily lost the floor after he took the appeal.

MR. BELL (of Tennessee). I would inquire whether there is not a bill already pending for the repeal of the Fugitive Slave Law?

THE PRESIDING OFFICER. I have not inquired of the Secretary, but it is my belief there is a similar bill pending; but it was not on that ground the Chair made this ruling.

MR. BELL. I would inquire whether there is not such a bill pending? Did not the honorable Senator from Ohio some time ago bring in such a bill?

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MR. WELLER. I think he did.

MR. CHASE. No, Sir.

MR. BELL. Then I am mistaken.

MR. CHASE. My bill is not on that subject.

THE PRESIDING OFFICER. The question is on the motion of the Senator from Louisiana, to lay on the table the appeal taken by the Senator from Massachusetts from the decision of the Chair.

MR. CHASE. I ask if the motion of the Senator from Louisiana is in order, when the Senator from Massachusetts retained the floor for the purpose of debating the appeal?

MR. BENJAMIN. The Senator is not in order in renewing that question, which has already been decided by the Chair.

THE PRESIDING OFFICER. If the Chair acted under an erroneous impression in supposing that debate on the appeal was not in order, when it actually is, it was the fault of the Chair, and it would not have been in order for the Senator from Louisiana to make the motion which he did make, while the Senator from Massachusetts was on the floor. But the Chair recognized the Senator from Louisiana, supposing that the Senator from Massachusetts had yielded the floor. The Senator had taken an appeal; he followed it up by no address to the Chair, indicating an intention that he intended to debate the appeal, or the Chair certainly should so far have recognized him. But the Chair would reconsider his ruling in that respect, with the consent of the Senator from Louisiana.

MR. BRIGHT (of Indiana). The Chair will permit me to suggest that I think the motion proper to be entertained now is the one proposed by the Senator from

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New Hampshire [Mr. NORRIS]. The Senator from Massachusetts presented his bill; the Senator from New Hampshire raised the question as to whether the Senate would grant leave to introduce it; and I think the proper question to be put now is, Will the Senate grant leave to introduce a bill repealing the Fugitive Slave Law? The effect of the motion of the Senator from Louisiana would be to lay the subject on the table, from which it might be taken at any time for action. For one, I desire to give a decisive vote now, declaring that I am unwilling to legislate upon the subject, that I am satisfied with the law as it reads, and that I will not aid the Senator from Massachusetts, or any Senator, in ——

THE PRESIDING OFFICER. The Senator from Indiana is certainly not in order.

MR. BRIGHT. I certainly am in order in calling the attention of the Chair to the fact that the Senator from New Hampshire ——

THE PRESIDING OFFICER. The Senator from Indiana is not in order.

MR. BRIGHT. Then I will sit down and ask the Chair to state wherein I am out of order.

THE PRESIDING OFFICER. In discussing a question which is not before the Senate.

MR. BRIGHT. I claim that the motion is before the Senate. The Senator from New Hampshire raised the question immediately, that ——

THE PRESIDING OFFICER. The Chair decides otherwise.

MR. BRIGHT. Then I appeal from the decision of the Chair, and I state this as my point of order: that, before the bill was presented in legal parlance, the Senator from New Hampshire raised the question as to whether

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the Senate would grant leave, and that is the point now before the Senate.

THE PRESIDING OFFICER. The Chair will state the question which he supposes to be pending. The Senator from California made a point of order, that debate on the bill proposed to be introduced by the Senator from Massachusetts was not in order. The Chair so ruled. From that ruling the Senator from Massachusetts took an appeal. The Chair supposed that the Senator from Massachusetts had yielded the floor, and he gave the floor to the Senator from Louisiana, who moved to lay that appeal on the table. That is the question which is now pending. The Chair before suggested, that, if the Senator from Massachusetts had not yielded the floor, he had made a mistake in giving the floor to the Senator from Louisiana, but he did not suppose that the Senator from Massachusetts, after taking the appeal, without some indication of his intention to debate it, could continue to hold the floor, and he therefore recognized the Senator from Louisiana. The Chair is sorry, if he did the Senator from Massachusetts injustice in that respect; but he did not hear him, and recognized the Senator from Louisiana.

MR. BRIGHT. I would respectfully ask the Chair what has become of the motion submitted by the Senator from New Hampshire?

THE PRESIDING OFFICER. The Chair did not understand him to submit a motion, but the Senator from California took his point of order.

MR. BRIGHT. I wish to inquire of the Senator from New Hampshire whether he has withdrawn his motion?

THE PRESIDING OFFICER. It was not entertained. It

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is not in his power to say whether it was withdrawn or not, for it was not entertained.

MR. NORRIS. I think I can inform my friend from Indiana how the matter stands. The Senator from Massachusetts proposed to introduce a bill on notice given. I raised the question, that it could not be introduced without leave of the Senate, if there was objection.

MR. SUMNER. Do I understand the Senator to say without notice given? I asked leave to introduce the bill in pursuance of notice.

MR. NORRIS. The Senator from Massachusetts, I have already stated, offered his bill agreeably to previous notice.

MR. SUMNER. Precisely.

MR. NORRIS. The question was then raised, whether it could be received, if there was objection? The question arose, whether leave should be granted to the Senator from Massachusetts to introduce the bill?

MR. SUMNER. That is the first question.

MR. NORRIS. The Senator from Massachusetts, upon the question of granting leave, undertook to address the Senate. He was then called to order by my friend from California for discussing that question. The Chair sustained the objection of the Senator from California. From the decision of the Chair the Senator from Massachusetts took an appeal; and that is where the question now stands, unless the Senator from Louisiana had a right to make the motion which he did make, which was to lay the appeal on the table.

THE PRESIDING OFFICER. The question is, unless the Senator from Louisiana will disembarrass the Chair by withdrawing it, on the motion of the Senator from Louisiana to lay the appeal on the table.

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MR. SUMNER. On that motion I ask for the yeas and nays.

The yeas and nays were ordered.

MR. FOOT (of Vermont). On what motion have the yeas and nays been ordered?

THE PRESIDING OFFICER. On the motion of the Senator from Louisiana.

MR. WALKER. I wish to know, before voting, what will be the effect of a vote given in the affirmative on this motion? Will it carry the bill and the whole subject on the table?

MR. FOOT. An affirmative vote carries the whole measure on the table.

THE PRESIDING OFFICER. Yes, Sir; if the motion to lay on the table be agreed to, it carries the bill with it.

SEVERAL SENATORS. No, no!

MR. BENJAMIN. The question is, whether, on the motion for leave to introduce the bill, there shall be debate? The Chair has decided that there shall be no debate. Those who vote "yea" on my motion to lay the appeal of the Senator from Massachusetts on the table will vote that there is to be no debate upon the permission to offer the bill, and then the question will be taken upon granting leave.

MR. WALKER. The Chair decides differently. The Chair decides, if I understand, that it will carry the bill on the table. Then how can we ever reach the question of leave, when objection is made?

MR. WELLER. I object to this discussion. The Chair will decide that question when it arises. It does not arise now. I insist that the Secretary shall go on and call the roll.

MR. WALKER. Suppose some of us object to it?

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MR. WELLER. Then I object to your discussing it.

THE PRESIDING OFFICER. The Chair, on reflection, thinks that the motion, if agreed to, would not have a further effect than to bring up the question of granting leave.

MR. BRIGHT. I desire to understand the Chair. I do not wish to insist on anything that is not right, or that is not within the rules. That I insist upon having. The honorable Senator from Louisiana is right in his conclusions as to his motion, provided he had a right to make the motion; but I doubt whether he had a right to make that motion while the motion of the honorable Senator from New Hampshire was pending. I do not wish, however, to consume the time of the Senate. If the effect of the decision of the Chair is to bring us back to the question as to whether we shall receive the bill or not, I will yield the floor.

THE PRESIDING OFFICER. That is it.

MR. BRIGHT. Very well.

MR. SUMNER. Before the vote is taken, allow me to read a few words from the Rules and Orders, and from Jefferson's Manual.

"One day's notice, at least, shall be given of an intended motion for leave to bring in a bill."

That is the 25th rule of the Senate; and then to that rule, in the publication which I now hold in my hand, is appended, from Jefferson's Manual, the following decisive language: —

"When a member desires to bring in a bill on any subject, *he states to the House, in general terms, the causes for doing it*, and concludes by moving for leave to bring in a bill entitled, &c. Leave being given, on the question, a committee is appointed to prepare and bring in the bill."

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Now I would simply observe, that my purpose was merely to make a statement ——

MR. BENJAMIN. I call to order.

THE PRESIDING OFFICER. The Senator had presented his bill, and was debating it afterwards. The question is on the motion of the Senator from Louisiana to lay the appeal on the table, and on that the yeas and nays have been ordered.

The question, being taken by yeas and nays, resulted, — yeas 35, nays 10, as follows : —

YEAS, — Messrs. Adams, Atchison, Bell, Benjamin, Brodhead, Brown, Butler, Cass, Clay, Cooper, Dawson, Dodge, of Iowa, Evans, Fitzpatrick, Geyer, Gwin, Johnson, Jones, of Iowa, Jones, of Tennessee, Mallory, Mason, Morton, Norris, Pearce, Pettit, Pratt, Rusk, Sebastian, Slidell, Stuart, Thompson, of Kentucky, Thomson, of New Jersey, Toombs, Toucey, and Weller, — 35.

NAYS, — Messrs. Chase, Fessenden, Fish, Foot, Gillette, Rockwell, Seward, Sumner, Wade, and Walker, — 10.

So the appeal was ordered to lie on the table.

THE PRESIDING OFFICER. The question now is on granting leave to introduce the bill.

MR. SUMNER. On that question I ask for the yeas and nays.

MR. STUART. I rise to a question of order; and I think, if the Chair will consider it for the moment, he will, or at least I hope he will, agree with me. The parliamentary law is the law under which the Senate act. Whenever there is a motion made to lay on the table a subject connected with the main subject, and it prevails, it carries the whole question with it. It is different entirely from the rules in the House of Representatives. The rules in the House vary the parliamentary law, and you may there move to lay a matter on the table, because that is the final vote, and is equivalent to

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rejecting it, and a motion to take it up from the table is not in order. But now the Presiding Officer will see, that, if this course be pursued, the Senate may grant leave to introduce this bill, they may go on and pass it, and yet next week it will be in order for the Senator from Massachusetts to move to take up the appeal which the Senate has just laid on the table; whereas the whole subject on which his appeal rested might have been passed and sent to the other House. That surely cannot be so. The ruling of the Chair in this respect, therefore, I suggest is wrong, and the motion to lay on the table carries the whole subject with it. It is important to have the matter settled for the future practice of the Senate.

THE PRESIDING OFFICER. At the first mooting of the proposition, the Chair was of that opinion; but he is perfectly satisfied now that it did not carry the whole question with it. The question was on the motion to lay the appeal on the table, and that motion was exhausted when it did lay the appeal on the table. It did not reach back to affect the question of granting leave. That is now the question before the Senate. On that the yeas and nays have been asked for by the Senator from Massachusetts.

The yeas and nays were ordered.

MR. STUART. I will not take an appeal from the decision of the Chair, but I only wish to say, that, as I am satisfied I am right, I do not wish, by acquiescing in the decision of the Chair, to embarrass us when such occasions may arise again.

The question, being taken by yeas and nays upon granting leave to introduce the bill, resulted, — yeas 10, nays 35, as follows : —

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YEAS, — Messrs. Chase, Dodge, of Wisconsin, Fessenden, Foot, Gillette, Rockwell, Seward, Sumner, Wade, and Walker, — 10.

NAYS, — Messrs. Adams, Atchison, Bell, Benjamin, Bright, Brodhead, Brown, Butler, Cass, Clay, Cooper, Dawson, Evans, Fitzpatrick, Geyer, Gwin, Johnson, Jones, of Iowa, Jones, of Tennessee, Mallory, Mason, Morton, Norris, Pearce, Pettit, Pratt, Rusk, Sebastian, Slidell, Stuart, Thompson, of Kentucky, Thomson, of New Jersey, Toombs, Toucey, and Weller, — 35.

So the Senate refused to grant leave to introduce the bill.

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DUTIES OF MASSACHUSETTS AT THE PRESENT CRISIS. FORMATION OF THE REPUBLICAN PARTY.

SPEECH BEFORE THE REPUBLICAN STATE CONVENTION AT WORCESTER, SEPTEMBER 7, 1854.

THE Free-Soil party, having assumed the name of Republican party, held its Annual Convention at Worcester, September 7, 1854. It was organized by the following officers: Hon. Robert Rantoul, of Beverly, the venerable father of the late Mr. Rantoul, as President; George R. Russell, of West Roxbury, B. W. Gage, of Charlestown, Samuel Hopkins, of Northampton, Charles Shute, of Hingham, Albert Currier, of Newburyport, Warren Lovering, of Medway, Adam Harrington, of Shrewsbury, Francis Watkins, of Hinsdale, Robert Sturtevant, of Savoy, Asaph Churchill, of Dorchester, Richard P. Waters, of Beverly, William Washburn, of Boston, Charles Beck, of Cambridge, Benjamin B. Sisson, of Westport, Joel Shed, of Bridgewater, Augustus Morse, of Leominster, Foster Hooper, of Fall River, Levi Reed, of Abington, John A. Andrew, of Hingham, Vice-Presidents; Joseph Denny, of Worcester, William H. Harris, of Worcester, E. W. Stacy, of Milford, Charles R. Ladd, of Chicopee, William H. DeCosta, of Charlestown, Secretaries. At the same Convention Hon. Henry Wilson was nominated for Governor, and Hon. Increase Sumner for Lieutenant-Governor. John A. Andrew, Esq., was made Chairman of the State Committee.

Mr. Sumner's reception in the Convention was quickened by recent events in which he had borne part. It is thus described in a report of the Convention.

"At this point the Hon. Charles Sumner entered the hall. His reception was such as is rarely accorded to a public man. The whole vast audience rose as one man to welcome him, and the most deafening cheers of welcome resounded for several minutes. We have never seen a more hearty and enthusiastic demonstration in honor of any man. It was the spontaneous homage of true men to the man who had upheld the Freedom standard and carried it into the thickest of the fight, — to the man who had upheld the honor of Massachusetts in the Senate, vindicated her opinions,

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and thrown back upon her assailants the taunts and insults which they had never ceased to heap upon her. The cheering, as our Senator appeared upon the platform and took his seat, was loud and long continued."

Mr. Sumner was at once called to speak. His speech is given as reported by the Boston *Traveller*, which ran a special train in one hour from Worcester, a distance of forty miles, in order to lay it before the public without delay.

In this speech Mr. Sumner had two objects, — first, to vindicate the necessity of the Republican party, and, secondly, to destroy the operation of the Fugitive Slave Act in Massachusetts, showing especially that citizens are not constrained to its support. His position with regard to the oath to support the Constitution was much discussed at the time, and the *National Intelligencer*, in elaborate articles by Mr. Gales, undertook to call him to account. To the latter he replied by letter. The speech had an extensive circulation.

Mr. Sumner came to the Convention at the invitation of Mr. Andrew, Chairman of the Provisional State Committee, whose first letter, dated July 22, 1854, was as follows.

"You will have seen, before receiving this note, the report of the meeting at Worcester, at which *a new party was begun*, and the steps preliminary to a State nominating convention taken. I think, in spite of strong opposition from the Whig presses and fuglemen, who cannot bear to give up their factitious powers and influence, that there is a great popular movement commenced, which may, under proper cultivation, disclose a splendid result in the fall. But more depends upon the aid you can give than upon that of any one man. Your recent battles in the Senate have shut the mouth of personal opposition, wrung applause from the unwilling, excited a State's pride and gratitude, such as rarely it is the fortune of any one to win. Your presence at the nominating convention, to be held on the 10th of August, — probably at Springfield, — is a point which must be agreed to at once. It will secure a most triumphant meeting, certainly in point of numbers and enthusiasm. I want you to write to me at once, permitting me to say to any of our friends that you *will* attend the meeting. A speech of half an hour, or an hour, is all that you *need* make, though you could have three hours, if you would use them. . . . . I am bold, speak urgently, since I am, as Chairman of the Provisional State Committee, officially responsible for the utmost exertions to serve the cause in this behalf."

This was followed by another letter from Mr. Andrew, dated August 28, 1854, as follows.

"I, however, wish to have the authority now to say definitely to all inquirers that you will be present on the 7th, and address the convention, and I wish this to be considered as a formal and official invitation. There are constant references made to the hope of seeing and hearing you there, on all

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hands. Everybody counts for that gratification. And we can do nothing which will so completely secure a triumphant gathering as to announce your name. The whole Free-Soil party, proud of your recent achievements, and grateful for the many exhibitions of your devotedness to our principles at all times of hazard and necessity, and the people of all parties, who feel you to have been the most conspicuously representative man to whom Massachusetts has intrusted her interest in Congress since the death of John Quincy Adams, are alike anxious to greet you.

"I do not wish you to feel under the necessity of preparing for one of your greatest speeches. No one will demand that of you. They only want you to come, and to say what seems to yourself proper to say at the time."

The speech drew from Mr. Chase the following expression.

"Your speech was just the thing. I read it with delighted admiration. Only one thing abated my pleasure, — the dissolution of the Independent Democracy. I am now without a party: but no matter; I shall soon cease to have any connection with politics."

Mr. Seward wrote thus: —

"I have read your noble speech. It is eminently able, and in a tone that is as characteristic as it is worthy of you. Of its particular direction, as relates to parties, it is not becoming me to speak. Its merits as an argument are unsurpassed."

MR. PRESIDENT, AND FELLOW-CITIZENS OF MASSACHUSETTS: —

AFTER months of constant, anxious service in another place, away from Massachusetts, I am permitted to stand among you again, my fellow-citizens, and to draw satisfaction and strength from your generous presence. [*Applause.*] Life is full of change and contrast. From slave soil I have come to free soil. [*Applause.*] From the tainted breath of Slavery I have passed into this bracing air of Freedom. [*Applause.*] And the heated antagonism of debate, shooting forth its fiery cinders, is changed into this brimming, overflowing welcome, while I seem to lean on the great heart of our beloved Commonwealth, as it palpitates audibly in this crowded assembly. [*Loud and long applause.*]

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Let me say at once, frankly and sincerely, that I am not here to receive applause or to give occasion for tokens of public regard, but simply to unite with fellow-citizens in new vows of duty. [*Applause.*] And yet I would not be thought insensible to the good-will now swelling from so many honest bosoms. It touches me more than I can tell.

During the late session of Congress, an eminent supporter of the Nebraska Bill said to me, with great animation, in language which I give with some precision, that you may appreciate the style as well as the sentiment, "I would not go through all that you do *on this nigger question* for all the offices and honors of the country." To which I naturally and promptly replied, "Nor would I, — for all the offices and honors of the country." [*Laughter and long applause.*] Not in such things are the inducements to this warfare. For myself, if I have been able to do aught in any respect not unworthy of you, it is because I thought rather of those commanding duties which are above office and honor. [*Cries of "Good! good!" and loud applause.*]

And now, on the eve of an important election in this State, we are assembled to take counsel how best to perform those duties which we owe to our common country. We are to choose eleven Representatives in Congress, — also, Governor, Lieutenant-Governor, and members of the Legislature, which last will choose a Senator of the United States, to uphold, for five years ensuing, the principles and honor of Massachusetts. If in these elections you were governed by partialities or prejudices, personal or political, or merely by the exactions of party, I should have nothing to say now, except to dismiss you to the ignoble work. ["*That is it!*" "*Good!*

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good!"] But I assume that you are ready to renounce these influences, and press forward with single regard to the duties now incumbent.

Here two questions occur, absorbing all others: *first*, what are our political duties here in Massachusetts at the present time? and, *secondly*, how, and by what agency, shall they be performed? What and how? These are the two questions, of which I shall briefly speak in their order, attempting no elaborate discussion, but aiming to state the case so that it will be intelligible to all who hear me.

And first, what are our present duties here in Massachusetts? Unfolding these, I need not dwell on the wrong and shame of Slavery, or on the character of the Slave Power — that Oligarchy of Slaveholders — now ruling the Republic. These you understand. And yet there are two outrages, fresh in recollection, which I must not fail to expose, as natural manifestations of Slavery and the Slave Power. One is the repeal of the Prohibition of Slavery in the vast Missouri Territory, now known as Kansas and Nebraska, contrary to time-honored compact and plighted faith. The other is the seizure of Anthony Burns on the free soil of Massachusetts, and his surrender, without judge or jury, to a Slave-Hunter from Virginia, to be thrust back into perpetual bondage. [*"Shame! shame!"*] These outrages cry aloud to Heaven, and to you, people of Massachusetts! [*Sensation.*] Their intrinsic wickedness is enhanced by the way in which they were accomplished. Of the first I know something from personal observation; of the latter I am informed only by public report.

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It is characteristic of the Slave Power not to stick at the means supposed needful in carrying forward its plans; but never, on any occasion, were its assumptions so barefaced and tyrannical as in the passage of the Nebraska Bill.

This bill was precipitated upon Congress without one word of public recommendation from the President, without notice or discussion in any newspaper, and without a single petition from the people. It was urged by different advocates, on two principal arguments, so opposite and inconsistent as to slap each other in the face [*laughter*]: one, that, by the repeal of the Prohibition, the territory would be absolutely open to the entry of slaveholders with their slaves; and the other, that the people there would be left to determine whether slaveholders should enter with their slaves. With some, the apology was the alleged rights of slaveholders; with others, the alleged rights of the people. With some, it was openly the extension of Slavery; and with others, openly the establishment of Freedom, under the pretence of "popular sovereignty." The measure thus upheld in defiance of reason was carried through Congress in defiance of all the securities of legislation.

It was carried, *first*, by *whipping in*, through Executive influence and patronage, men who acted against their own declared judgment and the known will of their constituents; *secondly*, by *thrusting out of place*, both in the Senate and House of Representatives, important business, long pending, and usurping its room; *thirdly*, by *trampling under foot* the rules of the House of Representatives, always before the safeguard of the minority; and, *fourthly*, by *driving it to a close* during the

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present Congress, so that it might not be arrested by the indignant voice of the people. Such were some of the means by which the Nebraska Bill was carried. If the clear will of the people had not been defied, it could not have passed. If the Government had not nefariously interposed, it could not have passed. If it had been left to its natural place in the order of business, it could not have passed. If the rules of the House and the rights of the minority had not been violated, it could not have passed. If it had been allowed to go over to another Congress, when the people might be heard, it would have failed, forever failed.

Contemporaneously with the final triumph of this outrage at Washington, another dismal tragedy was enacted at Boston. In those streets where he had walked as freeman Anthony Burns was seized as slave, under the base pretext that he was a criminal, — imprisoned in the Court-House, which was turned for the time into fortress and barracoon, — guarded by heartless hirelings, whose chief idea of Liberty was license to wrong [*loud applause, and cries of "That's it! that's it!"*], — escorted by intrusive soldiers of the United States, — watched by a prostituted militia, — and finally given up to a Slave-Hunter by the decree of a petty magistrate, who did not hesitate to take upon his soul the awful responsibility of dooming a fellow-man, in whom he could find no fault, to a fate worse than death. How all this was accomplished I need not relate. Suffice it to say, that, in doing this deed of woe and shame, the liberties of all our citizens, white as well as black, were put in jeopardy, the Mayor of Boston was converted to a tool [*applause*], the Governor of the Commonwealth to a cipher [*long continued applause*], the

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laws, the precious sentiments, the religion, the pride and glory of Massachusetts were trampled in the dust, and you and I and all of us fell down while the Slave Power flourished over us. [*"Shame! shame!" and applause.*]

These things in themselves are bad, very bad; but they are worse, when regarded as natural offspring of the Oligarchy now swaying the country. And it is this Oligarchy which, at every political hazard, we must oppose, until it is overthrown. Lord Chatham once exclaimed, that the time had been, when he was content to bring France to her knees; now he would not stop till he had laid her on her back. Nor can we be content with less in our warfare. We must not stop till we have laid the Slave Power on its back. [*Prolonged cheers.*] And, fellow-citizens, permit me to say, not till then will the Free States be absolved from all political responsibility for Slavery, and relieved from that corrupt spirit of compromise which now debases at once their politics and their religion; nor till then will there be repose for the country. [*Immense cheering.*] Indemnity for the past and security for the future must be our watchwords. [*Applause.*] But these can be obtained only when Slavery is dispossessed of present vantage-ground, by driving it back exclusively within the limits of the States, and putting the National Government, everywhere within its constitutional sphere, openly, actively, and perpetually on the side of Freedom. The consequences of this change of policy would be of far-reaching and incalculable beneficence. Not only would Freedom become national and Slavery sectional, as was intended by our fathers, but the National Government would become the mighty instrument and

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herald of Freedom, as it is now the mighty instrument and herald of Slavery. Its powers, its treasury, its patronage, would all be turned, in harmony with the Constitution, to promote Freedom. The Committees of Congress, where Slavery now rules, — Congress itself, and the Cabinet also, — would all be organized for Freedom. The hypocritical disguise or renunciation of Antislavery sentiment would cease to be necessary for the sake of political preferment; and the Slaveholding Oligarchy, banished from the National Government, and despoiled of ill-gotten political consequence, without ability to punish or reward, would cease to be feared, either at the North or the South, until at last the citizens of the Slave States, where a large portion have no interest in Slavery, would demand Emancipation, and the great work would commence. Such is the obvious course of things. To the overthrow of the Slave Power we are summoned by a double call, one political and the other philanthropic, — first, to remove an oppressive tyranny from the National Government, and, secondly, to open the gates of Emancipation in the Slave States. [*Loud applause.*]

While keeping this great purpose in view, we must not forget details. The existence of Slavery anywhere within the national jurisdiction, in the Territories, in the District of Columbia, or on the high seas beneath the national flag, is an unconstitutional usurpation, which must be opposed. The Fugitive Slave Bill, monstrous in cruelty, as in unconstitutionality, is a usurpation, which must be opposed. The admission of new Slave States, from whatsoever quarter, from Texas or Cuba [*applause*], Utah or New Mexico, must be opposed. And to every scheme of Slavery, whether in

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Cuba or Mexico, on the high seas in opening the slave-trade, in the West Indies, or in the Valley of the Amazon, whether accomplished or merely plotted, whether pending or in prospect, we must send forth an EVERLASTING NO! [*Long continued applause.*] Such is the present, immediate duty of Massachusetts, without compromise or hesitation.

Thus far I have spoken of duties in national matters; but there are other duties of pressing importance, here at home, not to be forgotten or postponed. It is often said that charity should begin at home. Better say, *charity should begin everywhere.* While contending with the Slave Power on the broad field of national politics, we must not forget the duty of protecting the liberty of all who tread the soil of Massachusetts. [*Immense cheering.*] Early in Colonial history Massachusetts set her face against Slavery. At the head of her Declaration of Rights she solemnly asserted that all men are born free and equal, and in the same Declaration surrounded the liberties of all within her borders by the inestimable rights of Trial by Jury and *Habeas Corpus.* Recent events on her own soil have taught the necessity of new safeguards to these great principles, — to the end that Massachusetts may not be the vassal of South Carolina and Virginia, that the Slave-Hunter may not range at will among us, and that the liberties of all may not be violated with impunity.

I am admonished that I must not dwell longer on these things. Suffice it to say that our duties in National and State affairs are identical, and may be described by the same formula: In the one case to put the National Government, in all its departments, and in the other case the State Government, in all its

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departments, openly, actively, and perpetually on the side of Freedom. [*Loud applause.*]

Having considered *what* our duties are, the question now presses, *How* shall they be performed? — by what agency, by what instrumentality, in what way?

The most obvious way is by choosing men to represent us in the National Government, and also at home, who will recognize these duties, and be ever loyal to them [*cheers*], — men who at Washington will not shrink from conflict with Slavery, and also other men who at home in Massachusetts will not shrink from the same conflict when the Slave-Hunter appears. [*Loud applause, and cries of "Good! good!"*] In the choice of men we are driven to the organization of parties; and here the question arises, By what form of organization, or by what party, can these men be best secured? Surely not by the Democratic party, as at present constituted [*laughter*]: though, if this party were true to its name, pregnant with human rights, it would leave little to be desired. In this party there are doubtless individuals anxious to do all in their power against Slavery; but indulge me in saying, that, so long as they continue members of a party which upholds the Nebraska Bill, they can do very little. [*Applause and laughter.*] What may we expect from the Whig party? [*A voice, "Resolutions."*] If more might be expected from the Whig party than the Democratic party, candor must attribute much of the difference to the fact that the Whigs are *out of power*, while the Democrats are *in power*. [*Long continued cheers.*] If the cases were reversed, and the Whigs were in power, as in 1850, I fear, that, notwithstanding the ardor of individuals

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and the Resolutions of Conventions [*great laughter*], — made, I fear, too often, merely to be broken, — the party might be brought to sustain an outrage as great as the Fugitive Slave Bill. [*Laughter and applause.*] But, without dwelling on these things (to which I allude with diffidence, and, I trust, in no uncharitable temper or partisan spirit), I desire to say that no party which calls itself *National*, according to the common acceptation of the word, — which leans upon a slaveholding wing [*cheers*], or is in combination with slaveholders [*cheers*], — can at this time be true to Massachusetts. [*Great applause.*] And the reason is obvious. It can be presented so as to penetrate the most common understanding. *The essential element of such a party, whether declared or concealed, is Compromise; but our duties require all constitutional opposition to Slavery and the Slave Power, without Compromise.* [" *That 's it!*" " *Good! good!*"] It is difficult, then, to see how we can rely upon the Whig party.

To the true-hearted, magnanimous citizens ready to place Freedom above Party, and their Country above Politicians, I appeal. [*Immense cheering.*] Let them leave old parties, and blend in an organization which, without compromise, will maintain the good cause surely to the end. Here in Massachusetts a large majority concur in sentiment on Slavery, — a large majority desire the overthrow of the Slave Power. These must not scatter their votes, but unite in one firm, consistent phalanx [*applause*], whose triumph will constitute an epoch of Freedom, not only in this Commonwealth, but throughout the land. Such an organization is presented by this Republican Convention, which announces its purpose to coöperate with the

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friends of Freedom in other States. [*Cheers.*] As REPUBLICANS, we go forth to encounter the *Oligarchs* of Slavery. [*Great applause.*]

Through this organization we shall secure the election of men who, unseduced and unterrified, will at Washington uphold the principles of Freedom, — and also here at home, in our own community, by example, influence, and vote, will help invigorate Massachusetts. I might go further, and say that by no other organization can we reasonably hope to obtain such men, unless in rare and exceptional cases.

Men are but instruments. It will not be enough to choose those who are loyal. Other things must be done here at home. In the first place, all existing laws for the protection of human freedom must be rigorously enforced [*applause, and cries of "Good!"*]; and since these are found inadequate, there must be new laws for this purpose within the limits of the Constitution. Massachusetts will do well in following Vermont, which by special law places the fugitive slave under the safeguard of Trial by Jury and the writ of *Habeas Corpus*. But a Legislature true to Freedom will not fail in remedies. [*Applause.*] A simple prohibition, declaring that no person, holding the commission of Massachusetts as Justice of the Peace, or other magistrate, shall assume to act as a Slave-Hunting Commissioner, or as counsel of any Slave-Hunter, under some proper penalty, would go far to render the existing Slave Act inoperative. [*Applause.*] There are not many so fond of this base trade as to continue in it, when the Commonwealth sets upon it a legislative brand.

Besides more rigorous legislation, Public Opinion must be invoked to step forward and throw over the

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fugitive its protecting ægis. A Slave-Hunter will then be a by-word and reproach; and all his instruments, especially every one who volunteers in this vileness without positive obligation of law, will naturally be regarded as part of his pack, and share the ignominy of the chief hunter. [*Laughter and cheers.*] And now, from authentic example, drawn out of recent history, learn how the Slave-Hunter may be palsied by contrition. I take the story from late letters on Neapolitan affairs by the eminent English statesman, Mr. Gladstone, who has copied it from an Italian writer. A most successful member of the Neapolitan police, Bolza, of the hateful tribe known as *sbirri*, whose official duties involved his own personal degradation and the loathing of others, has left a record of the acute sense retained of his shame by even such a man. "I absolutely forbid my heirs," says this penitent official, "to allow any mark, of whatever kind, to be placed over the spot of my burial, — much more any inscription or epitaph. I recommend my dearly beloved wife to impress upon my children the injunction, that, in soliciting any employment from Government, they shall ask for it elsewhere than in the *executive police*, and not, unless under extraordinary circumstances, to give her consent to the marriage of any of my daughters with a member of that service."[1] Thus testifies the Italian instrument of legal wrong. Let public opinion here in Massachusetts once put forth its might, and every instrument of the Fugitive Slave Act will feel a kindred shame. [*Great applause.*] They will resign. When, under the

[1] Two Letters to the Earl of Aberdeen, on the State Prosecutions of the Neapolitan Government, by the Right Hon. W. E. Gladstone, (London, 1851,) Letter II. p. 45.

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heartless Charles the Second of England, the Act of Uniformity went into operation, upwards of two thousand pulpits were vacated by the voluntary withdrawal of men who thought it better to face starvation than treachery to their Master. Here is an example for us. Let magistrates and officers, called to enforce a cruel injustice, take notice.

It is sometimes gravely urged, that, since the Supreme Court of the United States has affirmed the constitutionality of the Fugitive Act, there only remains to us, in all places, whether in public station or in private life, the duty of absolute submission. Yes, Sir, that is the assumption, which you will perceive is applied to the humblest citizen who holds no office and has taken no oath to support the Constitution, as well as to the public servant who is under the special obligations of an official oath. Now, without stopping to consider the soundness of the judgment affirming the constitutionality of this Act, let me say that the Constitution, as I understand it, exacts no such *passive obedience*. In taking the oath to support the Constitution, it is as I understand it, and not as other men understand it. [*Loud applause.*]

In adopting this rule, first authoritatively enunciated by Andrew Jackson, when, as President of the United States, in the face of the Supreme Court, he asserted the unconstitutionality of the Bank, I desire to be understood as not acting hastily. Let me add, that, if it needed other authority in its support, it has the sanction also of the distinguished Cabinet by which he was then surrounded, among whom were that unsurpassed jurist, Edward Livingston, Secretary of State, and that still living exemplar of careful learning and wisdom, Roger B.

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Taney, then Attorney-General, now Chief-Justice of the United States. Beyond these, it has the unquestionable authority of Thomas Jefferson, by whom it was asserted again and again as a rule of conduct. Thus, if any person at this day be disposed to deal sharply with me on account of the support which I now most conscientiously give to this rule, let him remember that his thrusts will pierce not only myself, the humblest of its supporters, but also the great fame of Andrew Jackson and of Thomas Jefferson,— patriots both of eminent life and authority, on whose Atlantean shoulders this principle of Constitutional Law will ever firmly rest.

Reason here is in harmony with authority. From the necessity of the case I must swear to support the Constitution either *as I do understand it* or *as I do* NOT *understand it.* [*Laughter.*] But the absurdity of dangling on the latter horn of the dilemma compels me to take the former, and there is a natural end of the argument. [*Great laughter and cheers.*] Is there a person in Congress or out of it, in the National Government or State Government, who, when this inevitable alternative is presented, will venture to say that he swears to support the Constitution as he does *not* understand it? [*Laughter and applause.*] The supposition is too preposterous. But let me ask gentlemen disposed to abandon their own understanding of the Constitution, and to submit their conscience to the standard of other men, By whose understanding do they swear? Surely not by that of the President: this is not alleged: but by the understanding of the Supreme Court. In other words, to this Court, being at present nine persons, — represented by a simple majority, it may be of *one* only, — is accorded the power of fastening such inter-

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pretation as they see fit upon any part of the Constitution, — adding to it, or subtracting from it, or positively varying its requirements, — actually making and unmaking the Constitution; and to their work all good citizens must bow, as of equal authority with the original instrument, ratified by solemn votes of the whole people! [*Great applause.*] If this be so, the oath to support the Constitution is hardly less offensive than the famous "et cætera" oath devised by Archbishop Laud, where the subject swore to certain specified things, with an "&c." added. Such an oath I have not taken. ["*Good! good!*"] An old poet anticipates my objection: —

> "Who swears &c. swears more oaths at once
> Than Cerberus out of his triple sconce;
> Who views it well with the same eye beholds
> The old half serpent in his numerous folds
> Accursed." [1]

The power of our Supreme Court is great, and its sphere is vast; but there are limits to its power and its sphere. According to the Constitution, "the judicial power shall extend to *all cases* in law and equity, arising under the Constitution, the laws of the United States, and treaties"; but it by no means follows that the interpretation of the Constitution, *incident* to the trial of these "cases," is final. Of course, the judgment in the "case" actually pending is final, as the settlement of a controversy, for weal or woe, to the litigating parties; but as a *precedent* it is not final even on the Supreme Court itself. When cited afterwards, it will be regarded with respect as an *interpretation of the Constitution*, and, if nothing appears against it, of controlling authority; but, at any day, in any litigation, at the

[1] Cleveland. See Hudibras, ed. Grey, Part I. Canto 2, Note to v. 650.

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trial of any "case," it will be within the unquestionable competency of the Court to review its own decision, *so far as it establishes any interpretation of the Constitution.* If the Court itself be not constrained by its own precedents, how can coördinate branches, under oath to support the Constitution, and, like the Court itself, called *incidentally* to interpret the Constitution, be constrained by them? In both instances, the power to interpret is simply *incident* to other principal duties, as the trial of "cases," the making of laws, or the administration of government; and it seems as plainly *incident* to a "case" of legislation or of administration as to a "case" of litigation. And on this view I shall act with entire confidence, under the oath I have taken.

For myself, let me say, that I hold judges, and especially the Supreme Court, in much respect; but I am too familiar with the history of judicial proceedings to regard them with any superstitious reverence. [*Sensation.*] Judges are but men, and in all ages have shown a full share of human frailty. Alas! alas! the worst crimes of history have been perpetrated under their sanction. The blood of martyrs and of patriots, crying from the ground, summons them to judgment. It was a judicial tribunal which condemned Socrates to drink the fatal hemlock, and which pushed the Saviour barefoot over the pavements of Jerusalem, bending beneath his cross. It was a judicial tribunal which, against the testimony and entreaties of her father, surrendered the fair Virginia *as a slave,* — which arrested the teachings of the great Apostle to the Gentiles, and sent him in bonds from Judæa to Rome, — which, in the name of the Old Religion, persecuted the saints and fathers of the Chris-

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tian Church, and adjudged them to a martyr's death, in all its most dreadful forms, — and afterwards, in the name of the New Religion, enforced the tortures of the Inquisition, amidst the shrieks and agonies of its victims, while it compelled Galileo to declare, in solemn denial of the great truth he had disclosed, that the earth did not move round the sun. It was a judicial tribunal which, in France, during the long reign of her monarchs, lent itself to be the instrument of every tyranny, as during the brief Reign of Terror it did not hesitate to stand forth the unpitying accessary of the unpitying guillotine. Ay, Sir, it was a judicial tribunal in England, surrounded by all forms of law, which sanctioned every despotic caprice of Henry the Eighth, from the unjust divorce of his queen to the beheading of Sir Thomas More, — which lighted the fires of persecution that glowed at Oxford and Smithfield, over the cinders of Latimer, Ridley, and John Rogers, — which, after elaborate argument, upheld the fatal tyranny of ship money against the patriot resistance of Hampden, — which, in defiance of justice and humanity, sent Sidney and Russell to the block, — which persistently enforced the laws of Conformity that our Puritan fathers persistently refused to obey, and afterwards, with Jeffreys on the bench, crimsoned the pages of English history with massacre and murder, even with the blood of innocent women. Ay, Sir, it was a judicial tribunal in our own country, surrounded by all forms of law, which hung witches at Salem, — which affirmed the constitutionality of the Stamp Act, while it admonished "jurors and people" to obey, — and which now, in our day, lends its sanction to the unutterable atrocity of the Fugitive Slave Act. [*Long continued applause, and three cheers for Sumner.*]

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Of course judgments of courts are binding upon inferior tribunals, and their own executive officers, whose virtue does not prompt them to resign rather than aid in executing an unjust mandate. Over all citizens, whether in public or private station, they will naturally exert, *as precedents*, an impartial influence. This I admit. But no man, who is not lost to self-respect, and ready to abandon that manhood which is shown in the Heaven-directed countenance, will voluntarily aid in enforcing a judgment which in conscience he believes wrong. He will not hesitate "to obey God rather than men," and calmly abide the peril he provokes. Not lightly, not rashly, will he take the grave responsibility of open dissent; but if the occasion requires, he will not fail. Pains and penalties may be endured, but wrong must not be done. [*Cheers.*] "Where I cannot obey I am willing to suffer," was the exclamation of the author of "Pilgrim's Progress," when imprisoned for disobedience to an earthly statute. Elsewhere I have said what I now repeat and proclaim on the house-top. Better suffer injustice than do it. Better be even the poor slave returned to bondage than the unhappy Commissioner. [*Applause and sensation.*]

I repeat, judges are but men, and I know no difference between the claim of power now made for them and that other insulting pretension put forth sometimes in the name of a king and sometimes of a people. Listen to what King James of England once wrote: "It is atheism and blasphemy to dispute what God can do: good Christians content themselves with his will revealed in his word. So it is presumption and high contempt in a subject to dispute what a king can do, or say that a king cannot do this or that: but rest

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in that which is the king's revealed will in his law."[1] Thus wrote one who was called "the wisest fool of Christendom." And so we are to rest in that popular will revealed in the Fugitive Slave Act, and ratified by the Supreme Court. The rabble of revolutionary France, in a spirit kindred to that of King James, cried out, as the executioner's cart tracked its way in blood, "We can do what we please,"—adding, "There is no God." Of course, if there were no God, they could not do as they pleased; nor could the king, whose pretension for himself was no better than that of the rabble. But there is a God, to be obeyed in all things, although kings, people, and even courts, assert the contrary.

The whole dogma of *passive obedience* must be rejected, whatever guise it assumes, under whatever *alias* it skulks, — whether in tyrannical usurpations of king, parliament, or judicial tribunal, — whether in exploded theories of Sir Robert Filmer, or rampant assumptions of the Fugitive Slave Act. The rights of the civil power are limited; there are things beyond its province; there are matters out of its control; there are cases in which the faithful citizen may say, — ay, *must* say, — "I will not obey." One of the highest flights of Mirabeau was, when, addressing the National Assembly of France, he protested against a law then pending, and exclaimed, "If you make such a law, I swear never to obey it!"[2] No man now responds to the words of Shakespeare, "If a king bid a man be a villain, he is

[1] Speech in the Star-Chamber, June 20, 1616: Works of the Most High and Mighty Prince, James, by the Grace of God King of Great Britain, &c., (London, 1616, folio,) p. 557. See also Finch's Law, p. 81.

[2] Projet de Loi sur les Émigrations, 28 Février, 1791: Œuvres, (Paris, 1834,) Tom. III. p. 85.

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bound by the indenture of his oath to be one." Nor, in this age of civilization and liberty, will any prudent reasoner, who duly considers the rights of conscience, claim for any earthly magistrate or tribunal, howsoever styled, a power which the loftiest monarch of a Christian throne, wearing on his brow "the round and top of sovereignty," dare not assert.

On this twofold conclusion I rest, and do not doubt the final result. The citizen who has sworn to support the Constitution is constrained to support it simply as he understands it. The citizen whose private life has kept him from assuming the obligations of official oath may bravely set at nought the unrighteous ruling of a magistrate, and, so doing, he will serve justice, though he expose himself to stern penalties.

Fellow-citizens of Massachusetts, our own local history is not without encouragement. In early colonial days, the law against witchcraft, now so abhorrent to reason and conscience, was regarded as constitutional and binding, — precisely as the Fugitive Slave Act, not less abhorrent to reason and conscience, is regarded as constitutional and binding. A special Court of Oyer and Terminer, with able judges, whose names are entwined with our history, enforced this law at Salem by the execution of nineteen persons as witches, — precisely as petty magistrates, acting under sanction of the Supreme Court of the United States, and also of the Supreme Court of Massachusetts, have enforced the Fugitive Act by the reduction of two human beings to slavery. The clergy of Massachusetts, particularly near Boston, and also Harvard College, were for the law. "Witchcraft," shouted Cotton Mather from the pulpit, "is the most nefandous high treason," "a capital crime," — even as

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opposition to the Fugitive Act has been denounced as "treason." [*Laughter.*]

But the law against witchcraft was not triumphant long. The General Court of the Province first became penitent, and asked pardon of God for "all the errors of his servants and people in the late tragedy." Jurymen united in condemning and lamenting the delusion to which they had yielded under the decision of the judges, and acknowledged that they had brought the reproach of wrongful bloodshed on their native land. Sewall, one of the judges, and author of the early tract against Slavery, "The Selling of Joseph," whose name lives freshly in his liberty-loving descendant [Hon. S. E. SEWALL] [*applause*], stood up in his place at church, before the congregation, and implored the prayers of the people, that the errors he had committed might not be visited by the judgments of an avenging God on his country, his family, or himself. And now, in a manuscript diary of this departed judge, may be read, on the margin against the contemporary record, in his own handwriting, words of saddest interjection and sorrow: *Væ! væ! væ!* Woe! woe! woe![1] [*Sensation.*]

The parallel between the law against witchcraft and the Fugitive Act is not yet complete. It remains for our Legislature, successor of that original General Court, to lead the penitential march. [*Laughter.*] In the slave cases there have been no jurymen to recant [*laughter*]; and it is too much, perhaps, to expect any magistrate who sanctioned the cruelty to imitate by public penitence the magnanimity of other days. Yet it

[1] Holmes, Annals, Vol. I. p. 440, note. In similar spirit, John Winthrop, the early Governor of Massachusetts, on his death-bed refused to sign an order to banish a heterodox person, saying, "I have done too much of that work already." — Hutchinson, History of Massachusetts, Vol. I. p. 142.

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is not impossible that future generations may be permitted to read, in some newly exhumed diary or letter by one of these troubled functionaries, words of woe not unlike those wrung from the soul of Sewall. [*Sensation.*]

Fellow-citizens, one word in conclusion: Be of good cheer. ["*That's it!*"] I know well the difficulties and responsibilities of the contest; but not on this account do I bate a jot of heart or hope. [*Applause.*] At this time, in our country, there is little else to tempt into public life an honest man, who wishes, by something that he has done, to leave the world better than he found it. There is little else to afford any of those satisfactions which an honest man can covet. Nor is there any cause which so surely promises final success. There is nothing good — not a breathing of the common air — which is not on our side. Ours, too, are those great allies described by the poet, —

> "Exultations, agonies,
> And love, and man's unconquerable mind."

And there are favoring circumstances peculiar to the present moment. By the passage of the Nebraska Bill, and the Boston kidnapping case, the tyranny of the Slave Power is unmistakably manifest, while at the same time all compromises with Slavery are happily dissolved, so that Freedom stands face to face with its foe. The pulpit, too, released from ill-omened silence, now thunders for Freedom, as in the olden time. [*Cheers.*] It belongs to Massachusetts, nurse of the men and principles which made the earliest Revolution, to vow herself anew to her ancient faith, as she lifts herself to the great struggle. Her place now, as then, is in the van, at the head of the battle. [*Sensation.*] To sustain this

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advanced position with proper inflexibility, three things are needed by our beloved Commonwealth, in all her departments of government, — the same three things which once, in Faneuil Hall, I ventured to say were needed by every representative of the North at Washington. The first is *backbone* [*applause*]; the second is BACKBONE [*renewed applause*]; and the third is BACKBONE. [*Long continued cheering, and three cheers for "Backbone."*] With these Massachusetts will be felt and respected, as a positive force in the National Government [*applause*], while at home, on her own soil, free at last in reality as in name [*applause*], all her people, from Boston islands to Berkshire hills, and from the sands of Barnstable to the northern line, will unite in the cry, —

> "No slave-hunt in our borders! no pirate on our strand!
> No fetters in the Bay State! no slave upon our land!"

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THE GOOD FARMER AND THE GOOD CITIZEN.

LETTER TO THE NORFOLK AGRICULTURAL SOCIETY, SEPTEMBER 25, 1854.

ANOTHER voice against the Fugitive Slave Act.

BOSTON, September 25, 1854.

MY DEAR SIR, — I am grateful for the honor done me by the invitation of your Society, and also for the kind manner in which you have conveyed it. But another engagement promises to occupy my time so as to deprive me of the pleasure thus kindly offered.

From the mother earth we may derive many lessons, and I doubt not they will spring up abundantly in the footprints of the Norfolk Agricultural Society. There is one that comes to my mind at this moment, and which is of perpetual force.

The good farmer obeys the natural laws; nor does he impotently attempt to set up any behest of man against the ordinances of God, determining day and night, summer and winter, sunshine and rain. The good citizen will imitate the good farmer; nor will he impotently attempt to set up any statute of man against the ordinances of God, which determine good and evil, right and wrong, justice and injustice. Let me express these correlative ideas in a sentiment which I trust may be welcome at your festival: —

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The Good Farmer and the Good Citizen: Acting in conformity with the laws of God, rather than the statutes of man, they know that in this way only can true prosperity be obtained.

Believe me, dear Sir, with much respect,

Very faithfully yours,

CHARLES SUMNER.

HON. MARSHALL P. WILDER.

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THE FUGITIVE SLAVE ACT TO BE DISOBEYED.

LETTER TO A COMMITTEE AT SYRACUSE, NEW YORK, SEPTEMBER 28, 1854.

THE escape of the Fugitive Slave, Jerry, at Syracuse, was commemorated at a public meeting, to which Mr. Sumner was invited. His answer was published at the time as "from a man who is not afraid to speak out."

BOSTON, September 28, 1854.

DEAR SIR, — I cannot be with you at Syracuse, according to the invitation with which I have been honored; but I shall rejoice at every word uttered there which helps to lay bare the true nature of Slavery, and its legitimate offspring, the Fugitive Slave Bill.

That atrocious enactment has no sanction in the Constitution of the United States or in the law of God. It shocks both. The good citizen, at all personal hazard, will refuse to obey it.

Yours very faithfully,

CHARLES SUMNER.

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POSITION AND DUTIES OF THE MERCHANT,

ILLUSTRATED BY THE LIFE OF

GRANVILLE SHARP.

ADDRESS BEFORE THE MERCANTILE LIBRARY ASSOCIATION OF BOSTON, ON THE EVENING OF NOVEMBER 13, 1854.

Veluti in speculum.

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HERE was another effort to obtain a hearing for unwelcome truth. While portraying the life and character of Granville Sharp, Mr. Sumner was saying what he had most at heart on Slavery, and exposing that swiftness which had been shown here in support of the Fugitive Slave Act. Describing the simple championship of the Englishman, he presented an example for imitation. Showing how Slavery had been overturned in England, he exhibited the essential rule of interpretation, by which, in the absence of precise words of sanction, it necessarily becomes impossible. Condemning the London merchants who contributed to support this wrong, and also the able lawyers who lent themselves to the same cause, he presented a picture where our merchants and lawyers might see themselves. Extolling that conscience which sustained Granville Sharp in his career, he vindicated all among us who would not bow before injustice.

The address was well received. The tide was then turning. Since then the lecture-room has been free. The condition of the public mind was noticed at the time. One newspaper said, that "a Boston audience of the kind then and there present would not have listened to it with patience four years ago," — that, "valuable as the lecture is on account of its literary merits, its real importance consists in marking an era in Boston opinion." Another paper says, with enthusiasm, "That Mr. Sumner should have delivered such a lecture before 'the solid men of Boston' is a great, a sublime fact in American history," and, after proceeding in this strain, concludes with the remark, that "it is one of the most striking examples of whipping one set of people over the backs of another that we ever heard of."

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ADDRESS.

MR. PRESIDENT, AND GENTLEMEN OF THE MERCANTILE LIBRARY ASSOCIATION: —

I HAVE been honored by an invitation to deliver an address, introductory to the annual course of lectures which your Association bountifully contributes to the pastime, instruction, and elevation of our community. You know, Sir, something of the reluctance with which, embarrassed by other cares, I undertook this service, — yielding to kindly and persistent pressure, which only a nature sterner than mine could resist. And now I am here to perform what I promised.

I am to address the Mercantile Library Association of Boston, numbering, according to your last Report, two thousand and seventy-eight members, and possessing a library of more than fifteen thousand volumes. With so many members and so many books, yours is an institution of positive power. Two distinct features appear in its name. It is, primarily, an association of persons in mercantile pursuits; and it is, next, an association for the improvement of its members, particularly through books. In either particular it is entitled to regard. But it possesses yet another feature, more interesting still, which does not appear in its name. It is an association of YOUNG MEN, with hearts yet hospitable to generous words, and with resolves not yet vanquished

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by the trials and temptations of life. Especially does this last consideration fill me with a deep sense of the privilege and responsibility to which you have summoned me. I am aware, that, according to usage, the whole circle of knowledge, thought, and aspiration is open to the speaker; but, as often as I have revolved the occasion in my mind, I have been brought back to the peculiar character of your Association, and have found myself unwilling to touch any theme not addressed to you especially as merchants.

I might fitly speak to you of books; and here, while considering principles to govern the student in his reading, it would be pleasant to dwell on the profitable delights, better than a "shower of cent per cent," on the society, better than fashion or dissipation, and on that completeness of satisfaction, outvying the possessions of wealth, and making the "library dukedom large enough," — all of which are found in books. But I leave this theme. I might also fitly speak to you of young men, their claims and duties; and here again, while enforcing the precious advantages of Occupation, it would be pleasant to unfold and vindicate that reverence which Antiquity wisely accorded to youth, as the season of promise and hope, pregnant with an unknown future, and therefore to be watched with tenderness and care, — to show how in every young man the uncertain measure of capacities yet undeveloped gives scope to magnificence of anticipation beyond any reality, — and to inquire what must be done, that all this anticipation may not wholly die while the young man lives. But there are other things which beckon me away. Not on books, not on youth must I speak, but on yet another topic, suggested directly by the name of your Association.

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With your kind permission, I shall speak to-night on what this age requires from the mercantile profession, or rather, since nothing is justly required which is not due, what the mercantile profession owes to this age. I would show the principle by which we are to be guided in making the *account current* between the mercantile profession and Humanity, and, might I so aspire, hold up the *Looking-Glass of the Good Merchant.* And since example is better than precept, and deeds are more than words, I shall exhibit the career of a remarkable man, whose simple life, beginning as apprentice to a linen-draper, and never getting beyond a clerkship, shows what may be accomplished by faithful, humble labor, and reveals precisely those qualities which in this age are needed to crown the character of the Good Merchant.

"I hold every man a debtor to his profession," was a saying of Lord Bacon, repeated by his contemporary and rival, Lord Coke. But this does not tell the whole truth. It restricts within the narrow circle of a profession obligations which are broad and universal as humanity. Rather should it be said that every man owes a debt to mankind. In determining the debt of the merchant, we must first appreciate his actual position in the social system.

At the dawn of modern times trade was unknown. There was nothing then like a policy of insurance, a bank, a bill of exchange, or even a promissory note. The very term "chattels," so comprehensive in its present application, yet, when considered in its derivation from the mediæval Latin *catalla*, cattle, reveals the narrow inventory of personal property in those days, when

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"two hundred sheep" were paid by a pious Countess of Anjou for a coveted volume of Homilies. The places of honor and power were then occupied by men who had distinguished themselves by the sword, and were known under the various names of Knight, Baron, Count, or — highest of all — Duke, *Dux*, leader in war.

Under these influences the feudal system was organized, with its hierarchy of ranks, in mutual relations of dependence and protection; and society for a while rested in its shadow. The steel-clad chiefs who enjoyed power had a corresponding responsibility, while the mingled gallantry and gentleness of chivalry often controlled the iron hand. It was the dukes who led the forces; it was the counts or earls who placed themselves at the head of their respective counties; it was the knights who went forth to do battle with danger, in whatever form, whether from robbers or wild beasts. It was the barons of Runnymede — there was no merchant there — who extorted from King John that Magna Charta which laid the corner-stone of English and American liberty.

Meanwhile trade made its humble beginnings. But for a long time the merchant was of a despised caste, only next above the slave who was sold as a chattel. If a Jew, he was often compelled, under direful torture, to surrender his gains; if a foreigner, he earned toleration by inordinate contribution to the public revenue; if a native, he was treated as caitiff too mean for society, and only good enough to be taxed. In the time of Chaucer he had so far come up, that he was admitted to the promiscuous company, ranging from knight to miller, who undertook the merry pilgrimage from the Tabard Inn to Canterbury; but the gentle poet satirically exposes his selfish talk: —

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> "His resons spake he ful solempnely,
> Souning alway the encrese of his winning:
> He wold the see were kept for any thing
> Betwixen Middelburgh and Orewell." [1]

The man of trade was so low, that it took him long to rise. A London merchant, the famous Gresham, in the time of Elizabeth, founded the Royal Exchange, and a college also; but trade continued still a butt for jest and gibe. At a later day an English statute gave new security to the merchant's accounts; but the contemporaneous dramatists exhibited him to the derision of the theatre, and even the almanacs exposed his ignorant superstitions by chronicling the days supposed to be favorable or unfavorable to trade. But in the grand mutations of society the merchant throve. His wealth increased, his influence extended, and he gradually drew into his company decayed or poverty-stricken members of feudal families, till at last in France (I do not forget the exceptional condition of Italy), at the close of the seventeenth century, an edict was put forth, which John Locke has preserved in the journal of his travels, "that those who merchandise, but do not use the yard, shall not lose their gentility" [2] (admirable discrimination!); and in England, at the close of the eighteenth century, his former degradation and growing importance were attested in the saying of Dr. Johnson, that "an English merchant is a new species of gentleman." [3] But this high arbiter, bending under feudal traditions, would not even then concede to him any merit, — proclaiming that there were "no qualities in trade that should entitle a man to superiority," — that

[1] Canterbury Tales, Prologue, 276 - 279.

[2] King's Life of Locke, Vol. I. p. 104.

[3] Boswell's Life of Johnson, ed. Croker, (London, 1835,) Vol. II. p. 294, note, anno 1765.

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"we cannot think that a fellow, by sitting all day at a desk, is entitled to get above us,"— and to the supposition by his faithful Boswell, that a merchant might be a man of enlarged mind, the determined moralist replied: "Why, Sir, we may suppose any fictitious character; but there is nothing in trade connected with an enlarged mind."[1]

In America feudalism never prevailed, and our Revolution severed the only cord by which we were connected with this ancient system. It was fit that the Congress which performed this memorable act should have for its President a merchant. It was fit, that, in promulgating the Declaration of Independence, by which, in the face of kings, princes, and nobles, the New Era was inaugurated, the education of the counting-house should flaunt conspicuously in the broad and clerkly signature of JOHN HANCOCK. Our fathers "builded better than they knew"; and these things are typical of the social change then taking place. By yet another act, fresh in your recollection, and of peculiar interest to this assembly, has our country borne the same testimony. A distinguished merchant of Boston, who has ascended through all the gradations of trade, honored always for private virtues as well as public abilities, — need I mention the name of ABBOTT LAWRENCE? — has been sent to the Court of St. James as ambassador of our Republic, and with that proud commission, higher than any patent of nobility, taken precedence of nobles in that ancient realm. Here I see the triumph of personal merit, but still more the consummation of a new epoch.

Yes, Sir! say what you will, this is the day of the merchant. As in the early ages war was the great concern

[1] Boswell's Johnson, Vol. V. pp. 63, 64, Oct. 18, 1773.

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of society, and the very pivot of power, so is trade now; and as feudal chiefs were the "notables," placed at the very top of their time, so are merchants now. All things attest the change. War, which was once the universal business, is now confined to a few; once a daily terror, it is now the accident of an age. Not for adventures of the sword, but for trade, do men descend upon the sea in ships, and traverse broad continents on iron pathways. Not for protection against violence, but for trade, do men come together in cities, and rear the marvellous superstructure of social order. If they go abroad, or if they stay at home, it is trade that controls them, without distinction of persons. In our country every man is trader: the physician trades his benevolent care; the lawyer trades his ingenious tongue; the clergyman trades his prayers. And trade summons from the quarry choicest marble and granite to build its capacious homes, and now, in our own city, displays warehouses which outdo the baronial castle, and salesrooms which outdo the ducal palace. With these magnificent appliances, the relations of dependence and protection, marking the early feudalism, are reproduced in the more comprehensive feudalism of trade. There are European bankers who vie in power with the dukes and princes of other days, and there are traffickers everywhere whose title comes from the ledger and not the sword, fit successors to counts, barons, and knights. As the feudal chief allocated to himself and his followers that soil which was the prize of his strong arm, so now the merchant, with grasp more subtle and reaching, allocates to himself and his followers, ranging through multitudinous degrees of dependence, all the spoils of every land, triumphantly won by trade. I would not

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press this parallel too far; but at this moment, especially in our country, the merchant, more than any other character, stands in the very boots of the feudal chief. Of all pursuits or relations, his is now the most extensive and formidable, making all others its tributaries, and bending at times even the lawyer and the clergyman to be its dependent stipendiaries.

Such, in our social system, is the merchant; and on this precise and incontrovertible statement I found his duties. Wealth, power, and influence are not for self-indulgence merely, and just according to their extent are the obligations *to others* which they impose. If, by the rule of increase, to him that hath is given, so in the same degree new duties are superadded: nor can any man escape from their behests. If the merchant be in reality our feudal lord, he must render feudal service; if he be our modern knight, he must do knightly deeds; if he be the baron of our day, let him maintain baronial charity to the humble, — ay, Sir, and baronial courage against tyrannical wrong, whatsoever form it may assume. Even if I err in attributing to him this peculiar position, I do not err in attributing to him these duties; for his influence is surely great, and he is at least a man, bound by simple manhood to regard nothing human as foreign to his heart.

The special perils which aroused the age of chivalry have passed away. Monsters, in the form of dragons, griffins, or unicorns, no longer ravage the land. Giants have disappeared from the scene. Robbers have been dislodged from castle and forest. Godeschal the Iron-hearted, and Robin Hood, are each without descendants. In the new forms which society assumes, touched by the potent wand of trade, there is no place for any of these.

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But wrong and outrage are not yet extinct. Cast out of one body, they enter straightway another, whence, too, they must be cast out. Alas! in our day, amidst all this teeming civilization, with the horn of Abundance at our gates, with the purse of Fortunatus in our hands, with professions of Christianity on our lips, and with the merchant installed in the high places of Chivalry, there are sorrows not less poignant than those which once enkindled knightly sympathy, and there is wrong which vies in loathsomeness with early monsters, in power with early giants, and in existing immunity with robbers once sheltered by castle and forest, — stalking through your streets in the abused garb of Law itself, and by its hateful presence dwarfing all the atrocities of another age. A wicked man is a deplorable sight; but a wicked law is worse than any wicked man, even than the wretch who steals human beings from their home in Africa; nor can its outrage be redressed by any incidental charities, perishing at night as manna in the wilderness. Like the monster, it must be overpowered; like the robber, it must be chained; like the wild beast, it must be exterminated.

To the merchant, then, especially to the young merchant, I appeal, by the position you have won and by the power which is yours, — go forth to redress these grievances, whatever they may be, whether in the sufferings of the solitary soul or audaciously organized in the likeness of law. That I may not seem to hold up any impracticable standard, that the path of duty may not appear difficult, and that no young man need hesitate, even though he find himself alone and opposed by numbers, let me present briefly, as becomes the hour, the example and special achievement of GRANVILLE SHARP, the

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humble Englishman, who, without wealth, fame, or power, did not hesitate to set himself against the merchants of the time, against the traditions of the English bar, against the authority of learned lawyers, and against the power of magistrates, until, by persevering effort, he compelled the highest tribunal of the land to declare the grand constitutional truth, that the slave who sets his foot on British ground becomes that instant free. His character of pure and courageous principle may be little regarded yet; but as time advances, it will become a guiding luminary. There are stars aloft, centres of other systems, in such depths of firmament that only after the lapse of ages does their light reach this small ball which we call earth.

Be assured, Mr. President, I shall not tread on forbidden ground. To the occasion and to your Association I shall be loyal; but let me be loyal also to myself. Thank God, the great volume of the Past is always open, with its lessons of warning and example. Nor will the assembly which now does me the honor to listen to me be disposed to imitate the pious pirates of the Caribbean Sea, who daily recited the Ten Commandments, always omitting the injunction, "Thou shalt not steal." I know well the sensitiveness of certain consciences. This is natural. It is according to the decrees of Providence, that whosoever has been engaged in meanness or wickedness should be pursued, wherever he moves, by reproving voices, speaking to him from the solitudes of Nature, from the darkness of night, from the hum of the street, and from every book that he reads, like fiery tongues at Pentecost, until at last the confession of Satan himself can alone express his wretchedness: —

> "Me miserable! which way shall I fly?
> Which way I fly is Hell: *myself am Hell!*"

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GRANVILLE SHARP was born at Durham, in 1735. His family was of great respectability and of ancient lineage. His grandfather was Archbishop of York, confidential chaplain and counsellor of the renowned Chancellor, Heneage Finch, Lord Nottingham. His less conspicuous father was archdeacon and prebendary of the Church, who, out of his ecclesiastical emoluments, knew how to dispense charity, while rearing his numerous children to different pursuits. Of these, Granville was the youngest son, and, though elder brothers were educated for professional life, he was destined to trade, a portion being set apart by his father to serve as his apprentice-fee in London. With this view his back was turned upon the learned languages, and his instruction was confined chiefly to writing and arithmetic; but at this time he read and enjoyed all the plays of Shakespeare, perched in an apple-tree of his father's orchard. When fifteen years old, he was bound as apprentice to a Quaker linen-draper in London, and at this tender age left his father's house. Of his apprenticeship he has given an interesting glimpse.

"After I had served about three years of my apprenticeship, my master, the Quaker, died, and I was turned over to a Presbyterian, or rather, as he was more properly called, an Independent. I afterward lived some time with an Irish Papist, and also with another person, who, I believe, had no religion at all."[1]

Although always a devoted member of the Church of England, these extraordinary experiences in early life placed him above the prejudice of sect, and inspired a rule of conduct worthy of perpetual memory, which he presents as follows.

[1] Memoirs, by Prince Hoare, (London, 1820,) p. 28.

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"It has taught me to make a proper distinction between the OPINIONS of men and their PERSONS. The former I can freely condemn, without presuming to judge the individuals themselves. Thus freedom of argument is preserved, as well as Christian charity, leaving personal judgment to Him to whom alone it belongs." [1]

Only two years before the enrolment of Granville Sharp among London apprentices, — that class so famous in local history, — another person, kindred in benevolence, and now in fame, Howard, the philanthropist, on whose career Burke has cast the illumination of his genius, finished service in the same place, as apprentice to a wholesale grocer. I do not know that these two congenial natures — or yet another contemporary of lowly fortunes, Robert Raikes, the inventor of Sunday schools — ever encountered in the world. But they are joined in example, — and the life of an apprentice, in all its humilities, seems radiant with their presence, as with heavenly light. Perhaps among the apprentices of Boston there may be yet a Granville Sharp or John Howard. And just in proportion as the moral nature asserts its rightful supremacy here will such a character be hailed of higher worth than the products of all the mills of Lowell, backed by all the dividends and discounts of State Street.

Shortly after the completion of his apprenticeship and entrance upon business, Sharp lost both his parents, and very soon thereafter, abandoning trade, obtained a subordinate appointment as supernumerary clerk in the Ordnance Office, where, after six years' service, he became simply "clerk in ordinary." Meanwhile, conscientiously fulfilling this life of routine and

[1] Memoirs, p. 29.

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labor, not unlike the toils of Charles Lamb at the India House, he pursued, in moments saved from business and snatched from sleep, a series of studies, which, though undervalued by his modesty, the scholar may envy. That he might better enjoy and vindicate that Book which he reverently accepted as the rule of life, he first studied Greek and then Hebrew, obtaining such command of both languages as to employ them skilfully in the field of theological controversy. Music and French he studied also, and our own English tongue too, on the pronunciation of which he wrote an excellent essay.

These quiet pursuits were interrupted by an incident which belongs to the romance of truth. An unhappy African, by the name of Jonathan Strong, was brought as a slave from Barbadoes to London, where, after brutal outrage, at which the soul shudders, inflicted by the person who called himself master, — I regret to add lawyer also, — he was turned adrift on the unpitying stones of the great metropolis, lame, blind, and faint, with ague and fever, and without a home. In this plight, while staggering along in quest of medical care, he was met by the Good Samaritan, Granville Sharp, who, touched by his misfortunes, bound up his wounds, gave him charitable assistance, placed him in a hospital, and watched him through a protracted illness, until at last health and strength returned, and he was able to commence service as freeman in a respectable home. In this condition, after the lapse of two years, he was recognized in the street by his old master, who at once determined to entrap him, and to hold him as slave. By deceitful message the victim was tempted to a public house, where he was shocked to encounter his cruel

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claimant, who, without delay, seized and committed him to prison. Here again was the Good Samaritan, Granville Sharp, who lost no time in enjoining upon the keeper of the prison, at his peril, not to deliver the African to any person whatever, and then promptly invoked the intervention of the Mayor of London. At the hearing before this magistrate, it appeared that the claimant had already undertaken, by formal bill of sale, to convey the alleged slave to another person, who, by an agent, was in attendance to take him on board a ship bound for Jamaica. As soon as the case was stated, the Mayor gave judgment in words worthy of imitation. "The lad," said this righteous judge, "has not stolen anything, and is not guilty of any offence, and is therefore at liberty to go away." The agent of the claimant, not disheartened, seized him by the arm, and still claimed him as "property," — yes, even as property! Sharp, in ignorance of legal proceedings, was for a moment perplexed, when the friendly voice of the coroner, who chanced to be near, whispered, "Charge him"; on which hint, our philanthropist, turning at once to the brazen-faced claimant, said, with justifiable anger of manner, "Sir, I charge you, in the name of the King, with an assault upon the person of Jonathan Strong, and all these are my witnesses,"— when, to avoid immediate commitment, and the yawning cell of the jail, he let go his piratical, slave-hunting grasp, "and all bowed to the Lord Mayor and came away, Jonathan following Granville Sharp, and no one daring to touch him."[1]

But the end was not yet. By this accidental and disinterested act of humanity Sharp was exposed at the

[1] Memoirs, pp. 32–35. Clarkson's History of the Abolition of the African Slave-Trade, Vol. I. pp. 57–60.

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same time to personal insult and to a suit at law. The discomfited claimant — the same lawyer who had originally abandoned the slave in the streets of London — called on him "to demand gentlemanlike satisfaction"; to which the philanthropist replied, that, as "he had studied the law so many years, he should want no satisfaction that the law could give him." And he nobly redeemed his word; for he applied himself at once to his defence against the legal process instituted by the claimant for an alleged abstraction of *property*. Here begins his greatness.

It is in collision with difficulty that the sparks of genuine character appear. This simple-hearted man, now vindictively pursued, laid his case before an eminent solicitor, who, after ample consideration with learned counsel, among whom was the celebrated Sir James Eyre, did not hesitate to assure him, that, under the British Constitution, he could not be defended against the action. An opinion given in 1729, by the Attorney-General and Solicitor-General of the time, Yorke and Talbot, — two great names in the English law, and each afterwards Lord Chancellor, — was adduced, declaring, under their respective signatures, "that a slave, by coming from the West Indies to Great Britain or Ireland, either with or without his master, *doth not* become free," and "that the master may legally compel him to return to the plantations"; and Lord Mansfield, the Chief Justice, was reported as strenuously concurring in this opinion, to the odious extent of delivering up fugitive slaves to their claimants. With these authorities against him, and forsaken by professional defenders, Sharp was not disheartened; but, though, according to his own striking language, "totally unacquainted

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either with the practice of the law or the foundations of it, having never in his life opened a law-book except the Bible," he was inspired to depend on himself. An unconquerable will, and instincts often profounder in their teaching than any learning, were now his counsellors. For nearly two years, during which the suit was still pending, he gave himself to intense study of the British Constitution in all its bearings upon human liberty. During these researches he was confirmed in his original prepossessions, and aroused to undying hostility against Slavery, which he plainly saw to be without any sanction in the Constitution. "*The word* SLAVES," he wrote, "*or anything that can justify the enslaving of others, is not to be found there, God be thanked!*"[1] And I, too, say, God be thanked!

The result of these studies was embodied in a tract, entitled "A Representation of the Injustice and Dangerous Tendency of tolerating Slavery, or of admitting the least Claim of Private Property in the Persons of Men in England." This was submitted to his counsel, one of whom was the famous commentator, Sir William Blackstone, and, by means of copies in manuscript, circulated among gentlemen of the bar, until the lawyers on the other side were actually intimidated, and the Slave-Hunter, failing to bring forward his action, was mulcted in treble costs; and thus ended that persecution of our philanthropist. In 1769 this important tract was printed.

Thus far it was an individual case only which engaged his care. Another soon followed, where, through his chivalrous humanity, the intolerable wrongs of a woman kidnapped in London and transported as slave

[1] Memoirs, p. 38.

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to Barbadoes, were redressed, — so far as earthly decree could go. Learning the infinite woe of Slavery, he was now aroused to broader effort. Shocked by an advertisement in a London newspaper, — such as often appeared in those days, — of "a black girl to be sold, of an excellent temper and willing disposition," — he at once protested to the Chancellor, Lord Camden, against such things as a "notorious breach of the laws of Nature, humanity, and equity, and also of the established law, custom, and Constitution of England";[1] and in the same year, May 15, 1769, by letter to the Archbishop of Canterbury, he solemnly appealed against the Slave-Trade, and thus by many years heralded the labors of Clarkson and Wilberforce. "I am myself convinced," he said, "that nothing can thrive which is in any way concerned in that unjust trade. I have known several instances which are strong proofs to me of the judgments of God, even in this world, against such a destructive and iniquitous traffic."[2] In these things he showed not only his love of justice, but his personal independence. "Although I am a *placeman*," he wrote on another occasion, "and indeed of a very inferior rank, yet I look on myself to be perfectly independent, because I have never yet been afraid to do and avow whatever I thought just and right, without the consideration of consequences to myself: for, indeed, I think it unworthy of a *man* to be afraid of the world; and it is a point with me never to conceal my sentiments on any subject whatever, not even from my superiors in office, *when there is a probability of answering any good purpose by it.*"[3]

Still again was his protecting presence enlisted to save a fellow-man from bondage; and here it is neces-

[1] Memoirs, p. 49. [2] Ibid., p. 45. [3] Ibid., p. 67.

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sary to note the new form of outrage. A poor African, Thomas Lewis, once a slave, was residing quietly at Chelsea, in the neighborhood of London, when he was suddenly seized by his former master, who, with the aid of two ruffians, bought for the fiendish purpose, dragged him on his back into the water, and thence into a boat lying in the Thames, when, with legs tied, and mouth gagged by a stick, he was rowed down to a ship bound for Jamaica, under a commander previously enlisted in the conspiracy, to be sold for a slave on arrival in that island. But this diabolical act, though warily contrived, did not escape notice. The cries of the victim, on his way to the boat, reached the servants of a neighboring mansion, who witnessed the deadly struggle, but did not venture a rescue. Their mistress, a retired widow, mother of the eminent naturalist and traveller, Sir Joseph Banks, on learning what had passed, instantly put forth her womanly exertion. Without the hesitation of her sex, she hurried to Granville Sharp, now known for knightly zeal to succor the distressed, laid before him the terrible story, and insisted upon vindicating the freedom of the stranger at her own expense. All honor to this woman! A simple warrant, first obtained by Sharp, was scouted by the captain, whose victim, bathed in tears, was already chained to the mast. The great writ of *Habeas Corpus* was next invoked; and the ship, which had contumaciously proceeded on its way, was boarded in the Downs, happily within British jurisdiction, by a faithful officer, who, in the name of the King of England, unbound the African, and took him back to freedom.

A complaint was now presented against the kidnappers, who were at once indicted by the grand jury. The cause was removed to the King's Bench, and on the

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20th of February, 1771, brought into court before Lord Mansfield. The defence set up, that the victim was their slave, and therefore property to be rightfully seized. Here the question was distinctly presented, whether any such property was recognized by the British Constitution? The transcendent magistrate who presided on the occasion saw the magnitude of the issue, and sought to avoid its formal determination by presenting the subordinate point, whether the claimant, supposing such property recognized, was able to prove the man to be his? The kidnappers were found guilty; but judgment against them was waived, on the recommendation of Lord Mansfield, who, be it observed, at every stage, shrank from any act by which Slavery in England should be annulled, and on this occasion avowed his "hope that the question never would be finally discussed." Sharp was justly indignant at this craven conduct, which, with all gentleness of manner, but with perfect firmness, he did not hesitate to arraign as open contempt of the true principles of the Constitution.[1]

Alas! it is the natural influence of Slavery to make men hard. Gorgon-like, it turns to stone. Among the judicial magistrates of the time, Lord Mansfield was not alone. His companion in contemporary fame, Blackstone, shared the petrifaction. The first edition of his incomparable Commentaries openly declared, that a slave, on coming to England, became at once a freeman; but, in a subsequent edition, after the question had been practically presented by Granville Sharp, the text was pusillanimously altered to an abandonment of this great constitutional principle; and our intrepid philanthropist hung his head with shame and anxiety,

[1] Memoirs, pp. 52–61.

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while the counsel for the Slave-Hunters triumphantly invoked this tergiversation as new authority against Freedom.[1]

The day was at hand when the great philanthropist was to be vindicated, even by the lips of the great magistrate. The Slavery question could not be suppressed: the Chief Justice of England could not suppress it. Drive out Nature with a pitchfork, and still she will return. Only a few months elapsed, when a memorable case arose, which presented the question distinctly for judgment. A negro, James Somerset, whose name, in the establishment of an immortal principle, will help to keep alive the appellation of the ducal house to which it originally belonged, — was detained in irons on board a ship lying in the Thames, and bound for Jamaica. On application to Lord Mansfield in his behalf, supported by affidavits, December 3, 1771, a writ of *Habeas Corpus* was directed to the captain of the ship, commanding him to return the body of Somerset into court, with the cause of his detention. In course of time, though somewhat tardily, the body was produced, and for cause of detention it was assigned, that he was the property of

[1] Memoirs, pp. 91, 92, note. The text of the first edition (1765), as quoted by Sharp's biographer, Hoare, was as follows: "And this spirit of liberty is so deeply implanted in our Constitution, and rooted even in our very soil, that a Slave, or a Negro, the moment he lands in England, falls under the protection of the laws, and, with regard to all national rights, becomes *eo instanti* a freeman." As altered, the latter part was found to read thus: ". . . . a negro, the moment he lands in England, falls under the protection of the laws, and so far becomes a freeman; though the master's right to his service may *possibly* still continue." Hoare remarks, that he finds this reading in the fifth edition, 1773. It appears also in an edition printed at Philadelphia so early as 1771. And thus the text was finally left by the author, and so remains. In the third edition, printed at Oxford in 1768, for "*possibly*" in the last clause we have the word "probably." Of this prior reading Hoare makes no mention.

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Charles Stewart, Esq., *of Virginia*, who had held him in Virginia as a slave, — that, when brought as such to London, he ran away from the service of his master, but was recovered, and finally delivered on board the ship to be carried to Jamaica, there to be sold as the slave and property of the *Virginia gentleman*.[1] As no facts were in issue here, the whole cause hinged on the Constitutionality of Slavery in England; and the great question which the Chief Justice had sought to avoid, and on which the Commentator had changed sides, was once again to be heard.

That the proceedings might have a solemnity in some degree corresponding to their importance, the cause was brought by Lord Mansfield before the King's Bench, where it was continued from time to time, according to the convenience of counsel and the court, running through months, and occupying different days in January, February, and May, down to the 22d June, 1772, when judgment was finally delivered. During all this period, Somerset, having recognized with sureties for his appearance in court, was left at large. To Granville Sharp he had repaired at once, and by him was kindly welcomed and effectually aided. Under the advice of this humble clerk, counsel learned in the law were retained, who were instructed by him in the grounds of defence. At his expense, too, out of his small means, the

[1] Since this Address, private papers have seen the light, by which it appears, that the claimant was cashier and paymaster of customs in North America, and for some years previous to this important case *resided in Boston*, where Somerset was known. Through all the arguments he is spoken of as from Virginia, and reference is constantly made to the laws of Virginia; nor is this mistake astonishing, when it is understood that an orator in Parliament once spoke of the "Island of Virginia," and nobody corrected him. — Mass. Hist. Soc. Proceedings for 1863-64, p. 324: *Villenage*, by Emory Washburn.

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proceedings were maintained. "Money," he nobly said, "has no value but when it is well spent; and I am thoroughly convinced that no part of my little pittance of ready money can ever be better bestowed than in an honest endeavor to crush a growing oppression, which is not only shocking to humanity, but in time must prove even dangerous to the community."[1] On the other side the costs were defrayed by a subscription among the merchants. Hear this, merchants of Boston, justly jealous of the good name of your calling, and hang your heads with shame!

To the glory of the English bar, the eminent counsel for the slave declined all fee for their valuable and protracted services; and here let me pause for one moment to pay them an unaffected tribute. They were five in number: Mr. Serjeant Davy, who opened the cause with the proposition, "that no man at this day *is* or *can be* a slave in England," — Mr. Serjeant Glynn, — Mr. Mansfield, afterward Chief Justice of the Common Pleas, — Mr. Hargrave, and Mr. Alleyne, — each of whom was patiently heard by the Court at length. The argument of Mr. Hargrave, who early volunteered his great learning in the case, is one of the masterpieces of the bar. This was his first appearance in court; but it is well that Liberty on that day had such support. For all these gallant lawyers, champions of the Right, there is honor ever increasing, which the soul spontaneously offers, while it turns in sorrow from the counsel, only two in number, who allowed themselves to be enlisted on the side of Slavery. I know well that in Westminster Hall there are professional usages — which happily do not prevail in our country, where every such service depends

[1] Memoirs, p. 57.

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purely on *contract* — by which a barrister thinks himself constrained to assume any cause properly presented to him. If this service depended on contract there, as with us, the sarcasm of Ben Jonson would be strictly applicable: —

"This fellow,
For six sols more, would plead against his Maker." [1]

But I undertake to affirm that no usage, professional or social, can give any apology for joining the pack of the Slave-Hunter. Mr. Dunning, one of the persons in this predicament, showed that he acted against his better nature.[2] The first words in his argument were: "It is incumbent on me to justify the detainer of the negro." Pray, why incumbent on him? He was then careful to show that he did not maintain any absolute property in him; and he proceeded to say, among other things, that it was his misfortune to address an audience, the greater part of which, he feared, was prejudiced the other way, — that, for himself, he would not be understood to intimate a wish in favor of Slavery, but that he was bound in duty to maintain those arguments most useful to the claimant, so far as consistent with the truth; and he concluded with this conscience-stricken appeal: "I hope, therefore, I shall not suffer in the opinion of those whose honest passions are fired at the name of Slavery; I

[1] The Fox, Act IV. sc. 2.

[2] A private letter from the claimant to James Murray, Esq., of Boston, dated London, June 15, 1772, carries us back to the times, and even to the court-room. "I am told," writes the claimant, "that some young counsel flourished away on the side of liberty, and acquired great honor. Dunning was dull and languid, and would have made a much better figure on that side also." Of course he would. After speaking of the "load of abuse thrown on L—d M——, for hesitating to pronounce judgment in favor of freedom," the claimant says, "Dunning has come in also for a pretty good share for taking the wrong side." (Mass. Hist. Soc. Proceedings for 1863–64, pp. 323, 324.) Abolitionists had begun to be critical.

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hope I have not transgressed my duty to Humanity."[1] Clearly the lawyer had transgressed his duty to Humanity. No man can rightfully enforce a principle which violates human nature; nor can any subtilty of dialectics, any extent of erudition, or any grandeur of intellect sustain him. Notwithstanding the character for liberal principles which John Dunning acquired, and which breathes in his sensitive excuses, — notwithstanding his double fame at once in Westminster Hall and Saint Stephen's Chapel, — notwithstanding the peerage which he won, — this odious service rendered to a Slave-Hunter, calling himself a Virginia gentleman, cries in judgment against him, and will continue to cry, as time advances. (Do not start, Mr. President, — I am narrating occurrences in another hemisphere and another century.) As well undertake a Slave-Hunt in the deserts of Africa as in the streets of London. As well pursue the fugitive with the hired whip of the overseer as with the hired argument of the lawyer. As well chase him with the baying of the blood-hound as with the tongue of the advocate. It is the lawyer's clear duty to uphold *human rights*, whether in the loftiest or the lowliest; and when he undertakes to uphold a wrong outrageous as Slavery, his proper function is so far reversed that he can be aptly described only in the phrase of the Roman Church, *Advocatus Diaboli*, the Devil's Advocate.

Passing from counsel to court, we find occasion for gratitude and sorrow. The three judges, Ashton, Willes, and Ashurst, who sat at the side of Lord Mansfield, were silent through the whole proceedings, overawed, perhaps, by his commanding authority, so that he alone

[1] Howell's State Trials, XX. 71-76.

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seems to be present. Of large intellect, and extensive studies, running into all regions of learning, — with a silver-tongued voice, and an amenity of manner which gave constant charm to his presence, — with unsurpassed professional and political experience combined, — early companion of Pope, and early competitor of Pitt, — having already once refused the post of Prime Minister, and three times refused the post of Chancellor, — he stood forth, at the period when the poor slave was brought before him, an acknowledged master of jurisprudence, and, take him for all in all, the most finished magistrate England had then produced. But his character had one fatal defect, too common on the bench. He lacked *moral firmness*, — happily not lacking in Granville Sharp. Still more, he was not naturally on the side of Liberty, as becomes a great judge, but always, by blood and instinct, on the side of prerogative and power, — an offence for which he was arraigned by his contemporary, Junius, and for which posterity will hold him to strict account. But his luminous mind, prompt to perceive the force of principles, could not resist the array of argument now marshalled for Freedom. He saw clearly that a system like Slavery could not find home under the British Constitution, *which nowhere mentions the name Slave;* and yet he shrank from the sublime conclusion. More than once he coquetted with the merchants, who had the case so much at heart, and twice ignobly suggested that the claimant might avoid the decision of the great question, fraught with Freedom or Slavery to multitudes, simply by manumitting the individual. And when at last the case could not be arrested by any device, or be longer postponed, — when judgment was inevitable, — he came to the work, not warmly or generously, but in

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trembling obedience to the Truth, which waited to be declared.

On other occasions, of purely commercial character, his judgments are more learned and elaborate, besides being reported with more completeness and care; but no judgment of equal significance ever fell from the great Oracle. From various sources I have sought its precise import.[1] It is remarkable for several rules, which it clearly enunciates, and which, though often assaulted, still stand as reason and as law. Of these, the first is expressed in these simple words: "If the parties will have judgment, *fiat justitia, ruat cœlum:* let justice be done, whatever be the consequence." The Latin phrase which here plays such a prominent part, though of classical stamp, cannot be traced to any classical origin, and it has even been asserted that it was freshly coined by Lord Mansfield on this occasion, worthy of such commanding truth in such commanding phrase. But it is of older date, and from another mint, — though it is not too much to say, that it took its currency and authority from him. Coming from such a conservative magistrate, it is of peculiar importance. With little expansion, it says openly: To every man his natural rights; justice to all, without distinction of person, without abridgment, and without compromise. Let

[1] It is strange that there should be no single satisfactory report of this memorable judgment. That usually quoted from Howell's State Trials, Vol. XX. coll. 80-82, was copied from Lofft, a reporter generally avoided as authority. There is another report in Hoare's Memoirs of Sharp, pp. 89-91; also another in Campbell's Lives of the Chief Justices, Vol. II. p. 419; and still another, and in some respects the best, in the Appendix (No. 8) to a tract published by Sharp in 1776, entitled "The Just Limitation of Slavery in the Laws of God, compared with the Unbounded Claims of the African Traders and British American Slaveholders." It is considered and quoted in other contemporary tracts.

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justice be done, though it drags down the pillars of the sky. Thus spoke the Chief Justice of England.[1]

[1] A British writer, giving an account of the Somerset case, says of this maxim, that "it has found its way into use as a classical expression, and, as no one has been able to find it in any Latin author, it is supposed to have been of Lord Mansfield's own coining." (Chambers's Edinburgh Journal, July 31, 1852, N. S. Vol. XVIII. p. 71: *Slaves in Britain.*) This is a mistake. The precise phrase will be found in Ward's "Simple Cobler of Aggawamm in America," written in 1645, and first printed in 1647, — "It is lesse to say, *Statuatur veritas, ruat Regnum*, than *Fiat justitia, ruat Cœlum*" (p. 14); but its origin, in substance, if not in form, is earlier. There is little doubt that it does not occur in any Latin author. Its Latinity is good, and might belong to the classical period. The latter clause, *ruat cœlum*, has classical authority, as in the passage of Terence, showing that it was a common saying in his time, "Quid si redeo ad illos *qui aiunt*, Quid si nunc *cœlum ruat?*" (Heauton., Act. IV. sc. 3.) The idea is also Roman. On the European continent, and especially in Germany, the maxim has another form, which is common, — *Fiat justitia, pereat mundus.* Binder, in his *Novus Thesaurus Adagiorum Latinorum*, (Stuttgart, 1861,) cites it in this form as *Regula Juris*, explained as "a designation for the maxims, taken from the *Corpus Juris* and the works of the different ancient civilians, which have become proverbial." In the same authority is the hexameter verse, *Fiat justitia, pereat licet integer orbis*, from Johannis Leibi *Studentica* (Coburg, 1627). In England the maxim was current in other forms. As early as February 26, 1624-5, in a letter to the English ambassador at Holland, alluding to "the business of Amboyne," we meet *Fiat justitia et ruat mundus.* (Birch's Court and Times of James I., Vol. II. p. 500.) In a speech in the House of Commons, December 22, 1640, against the judges who pronounced in favor of ship-money, an orator says: "If ever any nation might justifiably, we certainly may now, now most properly, most seasonably, cry out, and cry aloud, *Vel sacra regnet justitia vel ruat cœlum.*" And he concludes with a motion, "That a special committee may be appointed to examine the whole carriage of that extrajudicial judgment, ... and, upon report thereof, to draw up a charge against the guilty; and then *Lex currat, fiat justitia.* (Parl. Hist., 2d ed., London, 1763, Vol. IX. p. 192.) In the answer of the Duke of Richmond (January 31, 1641-2) to the charge of the Commons, it is said: "*Magna est veritas et prevalebit.* I wish it may do so in what concerns me. *Regnet justitia et ruat cœlum.*" (Parl. Hist., Vol. X. p. 254. Also, Howell's State Trials, Vol. IV. col. 116.) The first clause of the maxim is an old law phrase, found in Law Dictionaries, and often repeated. A letter, dated London, May 4, 1621, relating the fine and degradation of Lord Bacon, concludes, *Fiat justitia.* (Birch's James I., Vol. II. p. 252.) Charles I., in a letter to the Lords, dated May 11, 1641, interceding for Strafford, said: "But if no less than his life can satisfy my people, I must say, *Fiat justitia.*" (Parl. Hist. Vol. IX. p. 316. Howell's State Trials, Vol. III. col.

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And still another rule, hardly less important or less commanding, was clearly proclaimed in these penetrating words: "I care not for the supposed *dicta* of judges, however eminent, *if they be contrary to all principle*"; or, in other language, In vain do you invoke great names in the law, even the names of Hardwicke and Talbot, and my own learned associate, Blackstone, in behalf of an institution which defies reason and outrages justice. Human precedent is powerless against immutable principle. Thus again spoke the Chief Justice of England.

Braced by these rules, the next stages were logically easy. And here he uttered words which are like a buttress to Freedom. He declared, that, tracing Slavery to *natural principles*, it can never be supported: that is to say, Slavery is a violation of the great law of Nature, established by God himself, coextensive in space and time with the Universe. Again he proclaimed, Slavery cannot stand on any reason, moral or political, but only by virtue of *positive law;* and he clinched his conclusion by the unquestionable truth, that, in a matter so *odious*, the evidence and authority of this law must be taken strictly: in other words, a wrong like Slavery, which finds no support in natural law or in reason, can be maintained, if at all, only by some dread mandate, from some sovereign authority, irresistibly clear and incapable of a double sense, which declares in precise and unequivocal terms, that men guilty of no crime may be held as *slaves*, and be submitted to the bargains of the market-place, the hammer of the auctioneer, and the hunt of the blood-hound. Clearly no such mandate

1520.) If not classical in authority, the maxim is not without interest from association with great events of English history, while it is a perpetual injunction to justice. Shakespeare gives expression to similar truth, when he says, "Be just and fear not."

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could be shown in England. After asserting the obvious truth, that rights cannot depend on any discrimination of color, and thus discarding the profane assumptions of race, while he quoted apt Roman authority, —

"Quamvis ille niger, quamvis tu candidus esses,"

the Chief Justice concluded, "And therefore let the negro be discharged." Such was this immortal judgment. I catch its last words, already resounding through the ages, with the voice of deliverance to an enslaved people.

From Westminster Hall, where he had been held so long in painful suspense, the happy freedman, with glad tidings of deliverance, hurried to his angel protector, Granville Sharp, who, though organizing and sustaining these proceedings, was restrained by unobtrusive modesty from all attendance in court, that he might in no wise irritate the Chief Justice, unfortunately prepossessed against his endeavor. And thus closed the most remarkable constitutional battle in English history, fought by a simple clerk, once apprentice to a linen-draper, against the merchants of London, backed by great names in law, and by the most exalted magistrate of the age. Like the stripling David, he went forth to the contest with only a sling and a few smooth stones from the brook; and Goliath fell prostrate. Not merely the individual slave, but upwards of fourteen thousand human beings, — four times as many slaves as could be counted throughout New England at the adoption of the National Constitution, — rejoiced in emancipation; a slave-hunt was made impossible in the streets of London; and a great principle was set up which will stand forever as a Landmark of Freedom.

This triumph, hailed at the time by the friends of

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human happiness with exultation and delight, was commemorated by poetry and eloquence. It prompted Cowper, in his "Task," to these touching verses: —

> "Slaves cannot breathe in England; if their lungs
> Receive our air, that moment they are free:
> They touch our country, and their shackles fall.
> That's noble, and bespeaks a nation proud
> And jealous of the blessing. Spread it, then,
> And let it circulate through every vein
> Of all your Empire, that, where Britain's power
> Is felt, mankind may feel her mercy too."

It inspired Curran to a burst of eloquence, grand, and familiar to all who hear me.

"I speak in the spirit of the British law, which makes Liberty commensurate with and inseparable from British soil, — which proclaims even to the stranger and sojourner, the moment he sets his foot upon British earth, that the ground on which he treads is holy and consecrated by the genius of Universal Emancipation. No matter in what language his doom may have been pronounced, — no matter what complexion, incompatible with Freedom, an Indian or an African sun may have burnt upon him, — no matter in what disastrous battle his liberty may have been cloven down, — no matter with what solemnities he may have been devoted upon the altar of Slavery: the first moment he touches the sacred soil of Britain, the altar and the god sink together in the dust, his soul walks abroad in her own majesty, his body swells beyond the measure of his chains that burst from around him, and he stands redeemed, regenerated, and disenthralled by the irresistible genius of Universal Emancipation."[1]

It was this triumph which lifted Brougham, in our own day, to one of those vivid utterances by which truth is flashed upon unwilling souls.

[1] Defence of Archibald Hamilton Rowan, January 29, 1794: Speeches, ed. Davis, (London, 1847,) p. 182.

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"Tell me not of rights, — talk not of the property of the planter in his slaves. I deny the right, — I acknowledge not the property. The principles, the feelings of our common nature rise in rebellion against it. Be the appeal made to the understanding or to the heart, the sentence is the same that rejects it. In vain you tell me of laws that sanction such a claim. There is a law above all the enactments of human codes, — the same throughout the world, the same in all times: . . . . it is the law written on the heart of man by the finger of his Maker; and by that law, unchangeable and eternal, while men despise fraud and loathe rapine and abhor blood, they will reject with indignation the wild and guilty fantasy that man can hold property in man."[1]

Granville Sharp did not rest from labor. The Humanities are not solitary. Where one is found, there will others be also. The advocate of the slave in London was naturally the advocate of liberty for all everywhere. In this spirit he signalized himself against that scandal of the English law, the hateful system of Impressment, while he encountered no less a person than Dr. Johnson, whom he did not hesitate to charge with "plausible sophistry and important self-sufficiency, as if he supposed that the mere sound of words was capable of altering the nature of things";[2] also, against the claims of England in the controversy with her American colonies, zealously maintaining our cause in a publication, of which it is said seven thousand copies were printed in Boston[3]; also, in establishing a colony of liberated slaves at Sierra Leone, on the coast of Africa, predecessor of our more successful Liberia; and, finally,

[1] Speech on Negro Slavery, July 13, 1830: Works, Vol. X. p. 216.

[2] Memoirs, p. 169.

[3] A Declaration of the People's Natural Right to a Share in the Legislature (London, 1774). Memoirs, pp. 172, 173.

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as leader, not only against the Slave-Trade, but also against Slavery itself, so that he was hailed "Father of the cause in England," and was placed at the head of the illustrious committee by which it was conducted, though his rare modesty prevented him from taking the chair to which he was unanimously elected. But no modesty could check his valiant soul in conflict with wrong. Not content with his warfare in court, he addressed Lord North, the Prime Minister, warning him in the most earnest manner to take measures for the immediate abolition of Slavery in all the British dominions, as utterly irreconcilable with the principles of the British Constitution and the established religion of the land, and solemnly declaring that "it were better for the nation that their American dominions had never existed, or even that they had sunk in the sea, than that the kingdom of Great Britain should be loaded with the horrid guilt of tolerating such abominable wickedness."[1] With similar boldness, in an elaborate work, he arraigned the doctrine of *Passive Obedience*, advanced now in favor of judicial tribunals, as once in favor of kings, and he openly affirmed, as unquestionable truth, that every public ordinance contrary to reason, justice, natural equity, or the written word of God, must be promptly rejected.[2] Other things, too, I might mention; but I am admonished that I must draw to a close. Pardon me, if I touch yet one other shining point in his career.

The news of the Battle of Bunker Hill, which reached London at the end of July, 1775, found him at his desk, still a clerk in the Ordnance Office, and by position obliged to participate in the military preparations now

[1] Memoirs, pp. 78–80.
[2] The Law of Passive Obedience, p. 82, note.

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required. He was unwilling to be concerned, even thus distantly, in what he regarded as "that unnatural business"; and though a close attendance on his office for seventeen years, to the neglect of all other worldly opportunities, made it important to him as a livelihood, yet he resolved to sacrifice it. Out of regard to his great worth and the respect he had won, he was indulged at first with leave of absence; but when hostilities in the Colonies advanced beyond any prospect of speedy accommodation, then he vacated his office. This man of charity, who lived for others, was now left without support. But he was happy in the testimony he had borne to his principles: nor was he alone. Lord Effingham, and also the eldest son of Lord Chatham, threw up commissions in the army rather than serve on the side of injustice. They were all clearly right. It is vain to suppose that any human ordinance, whether from King, Parliament, or Judicial Tribunal, can vary our moral responsibilities, or release us from obedience to God. And since no man can stand between us and God, it belongs to each conscience for itself to determine its final obligations, and where pressed to an unrighteous act, — as if to slay, or, what is equally bad, to enslave, a fellow-man charged with no crime, — then at every peril to disobey the mandate. The example of Granville Sharp on this occasion is not the least among the large legacies of wisdom and fidelity which he has left to mankind.

All these are especially commended to us, as citizens of the United States, by the early and constant interest which he manifested in our country. By pen and personal intercession he vindicated our political rights, — and when independence was secured, his sympathies did

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not abate, as witness his correspondence with Adams, Jay, Franklin, and America's earliest Abolitionist, Anthony Benezet. His name became an authority here, — at the South as well as the North, — and the colleges, including Brown University, Harvard University, and William and Mary, of slaveholding Virginia, vied with each other in conferring upon him their highest academic honors. But the growing numbers of the Episcopal Church had occasion for special gratitude, only to be repaid by loyal regard for his character and life. On separation from the mother country, they were left without Episcopal head. To repair this deprivation, Granville Sharp, in published writings extensively circulated, proposed the election of bishops by the churches, and their subsequent consecration in England, as congenial to the usage of early Christians, and, after much correspondence and many impediments, enjoyed the satisfaction of presenting two bishops elect from America — one of whom was the exemplary Bishop White, of Philadelphia — to the Archbishop of Canterbury, by whom the Christian rite of laying on of hands was performed; and thus was the English Episcopacy communicated to this continent. I know not that the powerful religious denomination befriended by him in its infancy has ever sympathized with the great effort by which his name is exalted; but they should at least repel the weak imputation, so often levelled against all who are steadfast against Slavery, that their benefactor was "a man of one idea."

Mr. President, I have striven to keep within the open field of history and philanthropy, on neutral ground; but you would not forgive me, if, on this occasion, I forbore

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to adduce the most interesting testimony of Granville Sharp touching that much debated clause in our National Constitution which has been stretched to the surrender of fugitive slaves. Anterior to the Constitution, even during colonial days, he wrote, that any law which orders the arrest or rendition of fugitive slaves, or in any way tends to deprive them of legal protection, is to be deemed "a corruption, null and void in itself"; and at a later period, in an elaborate communication to the Abolition Society of Maryland, — mark, if you please, of slaveholding Maryland, — which was printed and circulated by this society, as "the production of a great and respectable name," calculated to relieve persons "embarrassed by a conflict between their principles and the obligations imposed by unwise and perhaps unconstitutional laws," he exposed the utter "illegality" of Slavery, and especially of "taking up slaves that had escaped from their masters."[1] But, in a remarkable letter to Franklin, dated January 10, 1788, — a short time after the Constitution had left the hands of the Convention, and some months before its final adoption by the people, — and which has never before been adduced, even in the thorough discussion of this question, the undaunted champion, who had not shrunk from conflict with the Chief Justice of England, openly arraigned the National Constitution. Here are his words.

"Having been always zealous for the honor of free governments, I am the more sincerely grieved to see the new Federal Constitution stained by the insertion of two most exceptionable clauses: the one in direct opposition to a most humane

[1] Letter to the Maryland Society for Promoting the Abolition of Slavery, (Baltimore, 1793,) pp. 2, 3.

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article, ordained by the first American Congress to be perpetually observed" (referring to the sufferance of the slave-trade till 1808); "and the other, in equal opposition to an express command of the Almighty, 'not to deliver up the servant that has escaped from his master,' &c. *Both clauses, however*, (the 9th section of the 1st article, and the latter part of the 2d section of the 3d [4th] article,) *are so clearly null and void by their iniquity, that it would be even a* CRIME *to regard them as law.*" [1]

It does not appear that Franklin ever answered this letter, in the short term of life which remained to him. But, in justice to his great name, I desire to express my conviction here, of course without argument, that this patriot philosopher never attributed to the clause, which simply provides for the surrender of fugitives from "service or labor," without the mention of *slaves*, any such meaning as it has since been made to assume. And Granville Sharp himself, in putting upon it the interpretation he did, forgot the judgment he had extorted from Lord Mansfield, affirming that any law out of which Slavery is derived must be construed *strictly*; and, stranger still, he forgot his own unanswerable argument, *that the word* SLAVES *is nowhere to be found in the British Constitution.* The question under the fugitive clause of our Constitution is identical with that happily settled in England.

In works and contemplations like these was the life of our philanthropist prolonged to a generous old age, cheered by the esteem of the good, informed by study, and elevated by an enthusiastic faith, which always saw the world as the footstool of God; and when, at last, in

[1] Memoirs, p. 253.

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1813, bending under the burden of seventy-seven winters, he gently sank away, it was felt that a man had died in whom was the greatness of goodness. Among the mourners at his grave stood William Wilberforce; and over the earthly remains of this child of lowly beginnings were now dropped the tears of a royal duke. The portals of that great Temple of Honor, where are treasured England's glories, swung open at the name of England's earliest Abolitionist. A simple tablet, from the chisel of Chantrey, representing an African slave on his knees in supplication, and also the lion and the lamb lying down together, with a suitable inscription, was placed in the Poet's Corner of Westminster Abbey, in close companionship with those stones which bear the names of Chaucer, Spenser, Shakespeare, Milton, Dryden, Goldsmith, Gray. As the Muses themselves did not disdain to watch over the grave of one who had done well on earth, so do the poets of England keep watch over the monument of Granville Sharp. Nor is his place in that goodly company without poetical title. The poet is simply *creator;* and he who was inspired to create freemen out of slaves was poet of the loftiest style. Not in the sacred Abbey only was our philanthropist commemorated. The city of London, centre of those Slave-Hunting merchants over whom his great triumph was won, now gratefully claimed part of his renown. The marble bust of England's earliest Abolitionist was installed at Guildhall, home of metropolitan justice, pomp, and hospitality, in the precise spot where once had stood the bust of Nelson, England's greatest Admiral, and beneath it was carved a simple tribute, of more perennial worth than all the trophies of Trafalgar:—

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GRANVILLE SHARP,

TO WHOM ENGLAND OWES THE GLORIOUS VERDICT
OF HER HIGHEST COURT OF LAW,
THAT THE SLAVE WHO SETS HIS FOOT ON
BRITISH GROUND
BECOMES THAT INSTANT
FREE.

Gentlemen of the Mercantile Library Association, — such was Granville Sharp, and such honors England to her hero paid. And now, if it be asked, why, in enforcing the duties of the Good Merchant, I select his name, the answer is prompt. It is in him that the merchant, successor to the chivalrous knight, aiming to fulfil his whole duty, may find a truer prototype than in any stunted, though successful votary of trade, while the humble circumstances of his life seem to make him an easy example. Imitating him, commerce would thrive none the less, but goodness more. Business would not be checked, but it would cease to be pursued as the "one idea" of life. Wealth would still abound; but there would be also that solid virtue, never to be moved from truth, which, you will admit, even without the admonition of Plato, is better than all the cunning of Dædalus or all the treasures of Tantalus.[1] The hardness of heart engendered by the accursed greed of gain, and by the madness of worldly ambition, would be overcome: the perverted practice, that *Policy is the best Honesty*, would be reversed; and *Merchants would be recalled, gently, but irresistibly, to the great* PRACTICAL DUTIES *of this age*, and thus win the palm of true honesty, which trade alone can never bestow.

[1] Euthyphron, § 12.

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"Who is the HONEST MAN?
He that doth still and strongly good pursue,
To GOD, his neighbor, and himself, most true."[1]

YOUNG MERCHANTS OF BOSTON! I have spoken to you frankly and faithfully, trusting that you would frankly and faithfully hearken to me. And now, in the benison once bestowed upon the youthful Knight, I take my leave: "Go forth! be brave, loyal, and successful!"

[1] Herbert, The Temple: *Constancy.*

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WAGES OF SEAMEN IN CASE OF WRECK.

SPEECH IN THE SENATE, ON INTRODUCING A BILL TO SECURE WAGES TO SEAMEN IN CASE OF WRECK, FEBRUARY 12, 1855.

ON the 26th of December, 1854, Mr. Sumner introduced the following resolution: —

"*Resolved*, That the Committee on Commerce be directed to consider if any legislation be needed in order to secure the wages of merchant seamen in the case of wreck."

On the 12th of February, 1855, Mr. Sumner followed up this resolution by introducing a bill, which was read twice and referred to the Committee on Commerce, as follows: —

"*A Bill to secure Wages to Seamen in case of Wreck.*

"*Be it enacted*, &c., That, in case of wreck or loss of any ship or vessel of the United States, every seaman belonging thereto shall be entitled to his wages up to the period of such wreck or loss, whether such ship or vessel shall or shall not have previously earned freight, provided such seaman shall have exerted himself to the utmost to save the ship, cargo, and stores; and in any trial of the question of services, the master, although a party to the suit, shall be a competent witness on this question.

"SEC. 2. *And be it further enacted*, That every stipulation, by which any seaman shall consent to abandon his wages, in case of wreck or loss of the ship or vessel, or in case of the failure to earn freight, shall be wholly void."

On this bill Mr. Sumner spoke as follows.

MR. PRESIDENT, — In introducing this bill, I desire to make a brief explanation, which shall, at least, be a record of my views with regard to it.

The bill proposes an amelioration of the existing Maritime Law in respect to the wages of merchant seamen, which, so far as England is concerned, has been

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made already by Act of Parliament, and in our country can be accomplished only by Act of Congress.

By existing Maritime Law, the seaman's wages depend upon a technical rule, which sometimes occasions hardship. Freight is compendiously said to be the mother of wages. In conformity with this fanciful idea, wages are made to depend upon the earning of freight, unless the freight is waived by agreement of the owner, or the voyage or freight is lost by negligence, fraud, or misconduct of the owner or master, or voluntarily abandoned. In case of wreck, the sailor has simply the chance of something under the name of salvage, if the fragments saved happen to be of any value; but if the loss be total, then he is without remedy. In wrecks, which occur with melancholy frequency, on our churlish winter coast, this hardship adds even to the sorrows of disaster. Thus, as in a case which has actually arisen, a crew may commence service at Calcutta, may navigate the Indian Ocean, double the Cape of Good Hope, and bring their ship safely within sight of land, and then, by total loss of ship and cargo, from acknowledged perils of the sea, they may lose everything, even their right to wages, and may find themselves in a strange port, the prey of poverty. Nor can any merit, either throughout the protracted voyage or in the hour of peril and shipwreck, prevent the operation of this technical rule.

There is also another circumstance which constrains the poor sailor. The owner may insure his ship, and also his freight, so that he may lose nothing but the premium he pays; but the sailor is not allowed to protect himself by insurance from loss of wages: his loss is literally total.

Now this technical rule, which fastens the wages of

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the sailor to the fortunes of the vessel, or, in other words, makes the right dependent on the successful issue of the enterprise for which he is hired, must be considered an offshoot of Mediæval Maritime Law. It is not found in the Roman Law, nor in the maritime legislation of the Eastern Empire, nor in that early compilation which goes under the name of the Rhodian Laws. An eminent American judge, who sheds great light upon maritime jurisprudence, — I refer to the learned and able Judge Ware, of the District Court of Maine, — says, in a judicial opinion, that "it owes its origin to the necessities and peculiar hazards which maritime commerce had to encounter in the Middle Ages, when to the dangers of the winds and waves were added the more formidable perils of piracy and robbery." [1] The rule, having been thus established, was preserved in the maritime jurisprudence of Europe, when the special exigencies in which it had its birth ceased to exist. It has outlived the circumstances and excuses of its origin, and now survives to vex, oppress, and disappoint the most needy, if not the most meritorious, of all concerned in the business of the seas.

This hard rule survives with us, but not everywhere. The greatest commercial nation of the world has led the way in its abolition, and set an example to the United States. The Act of Parliament, of 7th and 8th Victoria, ch. 112, sec. 17 (at the close), — called "The Merchant Seamen's Act," — provides that

"In all cases of wreck or loss of the ship, every surviving seaman shall be entitled to his wages up to the period of the wreck or loss of the ship, whether such ship *shall or shall not have previously earned freight:* provided the seaman shall

[1] *The Dawn*, Daveis, 188.

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produce a certificate from the master cr chief surviving officer of the ship, to the effect that he had exerted himself to the utmost to save the ship, cargo, and stores."

But the sailor was not completely protected by this provision. Experience in England showed that the cunning of agents was able to introduce into the shipping articles an agreement waiving the right to wages in case of loss, which the unthrifty sailor signed, ignorant or careless of its import. To remedy this abuse, a further Act of Parliament, of 13th and 14th Victoria, ch. 93, sec. 53, — known as "The Mercantile Marine Act," —

"No seaman shall, by reason of any agreement, forfeit his lien upon the ship, or be deprived of any remedy for the recovery of his wages, to which he would otherwise have been entitled; and every stipulation which is inconsistent with any provision of this Act, or of any other Act relating to merchant seamen, and every stipulation by which any seaman consents *to abandon his right to wages in the case of the loss of the ship*, or to abandon any right which he may have or obtain in the nature of salvage, *shall be wholly inoperative*."

The bill which I now introduce is grounded on the provisions quoted from the two Acts of the British Parliament, and contains two principles: *first*, that seamen shall be paid their wages down to the time of the loss of the ship, in case they serve faithfully to the last; and, *secondly*, that they shall not be permitted to lose their wages through any agreement in the shipping articles.

In some details I have departed from the British Act. It does not seem advisable to make the wages dependent on "a certificate from the master or chief surviving officer of the ship," but to leave the question of services

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open to proof in any way, according to received rules of evidence. Therefore I have said that the wages shall be paid, "*provided* the seaman shall have exerted himself to the utmost to save the ship, cargo, and stores." The reasons for this course are clear. Masters are often part owners of American ships, and thus have a personal interest adverse to the sailor. In a mood of selfishness or recklessness, they might refuse the certificate, even though well earned. Now, in constructing a protection to the sailor, it does not seem prudent to make his wages dependent upon any such quarter. Indeed, it is hardly just to take from him the right to establish his claim before the Admiralty Court, merely because an interested master refuses a certificate, when, perhaps, plenary proof might be furnished *aliunde*. Moreover, if the question were put in control of the master, he might obtain an improper influence over the minds of the crew, inducing them even to sacrifice truth in the event of litigation between owners and underwriters.

There can be no harm in leaving the question of fact to be proved by competent witnesses, like every other question of fact: and the seamen should be competent witnesses for each other. A sagacious court will know how to weigh their testimony, should it come in conflict with that of the officers. It seems proper that the master, too, though a party to the suit, — as in the case of a libel against him *in personam*, or in a suit at Common Law, — should be competent to testify to the conduct of the libellant or plaintiff, — in other words, whether he has "exerted himself to the utmost"; and I have introduced into the bill a provision accordingly.

The British Act of 7th and 8th Victoria contains another defect. It limits the wages to "every surviving

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seaman." I can see no good reason why the wife and children of the sailor who has perished in the forlorn hope perhaps, in the cause of all, should be deprived of the humble wages so dearly earned by their natural protector, and thus be compelled to feel a new deprivation added to their bereavement. In the proposed bill there is no such limitation.

Beyond this brief statement, I need not on this occasion add another word. Already Congress has shown a disposition to modify the rigorous Maritime Law in some of its provisions. In 1851 it made a change in the liability of ship-owners as common carriers. But this very liability originated, to a certain extent, in the same principles from which is derived the liability of the seamen, if they fail to bring the ship and cargo to port. Ship-owners and sailors were both treated as insurers. This was in the age of force, before the contract of insurance had spread its broad protection over commerce in every sea. The seaman should share this protection. He should be treated as not necessarily either pirate or coward.

In the discussions of the Senate on the proposed change in the liability of ship-owners, it was effectively urged by my immediate predecessor, a distinguished Senator from Massachusetts, the late Robert Rantoul, Jr., that, if the United States failed to adopt that measure, the other maritime nations would have an advantage in the carrying trade. It is equally true, that, unless we adopt the measure now proposed, Great Britain will have the advantage of us in the rate of seamen's wages; for, under her existing laws, the seaman can afford to work cheaper on board a British ship than under the American flag.

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The measure now proposed is of direct importance to the hundred and fifty thousand seamen constituting the mercantile marine of the United States. It also concerns the million of men constituting the mercantile marine of the civilized world, any of whom, in the vicissitudes of the sea, may find themselves in American bottoms. I commend it as a measure of enlightened philanthropy, and also of simple justice.

I ask that the bill, having been read twice, be referred to the Committee on Commerce.

The motion was agreed to.

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AGAINST CAPITAL PUNISHMENT.

LETTER TO A COMMITTEE OF THE MASSACHUSETTS LEGISLATURE, FEBRUARY 12, 1855.

SENATE CHAMBER, February 12, 1855.

DEAR SIR, — In response to your inquiry, I beg leave to say, that I am happy in an opportunity to bear my testimony against Capital Punishment. My instincts were ever against it, and, from the time when, while yet a student of law, I read the classical report to the Legislature of Louisiana, by that illustrious jurist, Edward Livingston, I have been constantly glad to find my instincts confirmed by reason. Nothing of argument or experience since has in any respect shaken the original and perpetual repugnance with which I have regarded it. Punishment is justly inflicted by human power, with a twofold purpose: *first*, for the protection of society, and, *secondly*, for the reformation of the offender. Now it seems to me clear, that, in our age and country, the taking of human life is not *necessary* to the protection of society, while it reduces the period of reformation to a narrow, fleeting span. If not necessary, it cannot come within the province of *self-defence*, and is unjustifiable.

It is sad to believe that much of the prejudice in favor of the gallows may be traced to three discreditable sources: *first*, the spirit of vengeance, which surely does not properly belong to man; *secondly*, unworthy

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timidity, as if a powerful, civilized community would be in peril, if life were not sometimes taken by the government; and, *thirdly*, blind obedience to the traditions of another age. But rack, thumbscrew, wheel, iron crown, bed of steel, and every instrument of barbarous torture, now rejected with horror, were once upheld by the same spirit of vengeance, the same timidity, and the same tradition of another age.

I trust that the time is at hand, when Massachusetts, turning from the vindictive gallows, will provide a comprehensive system of punishment, which by just penalties and privations shall deter from guilt, and by just benevolence and care shall promote the reformation of its unhappy subjects. Then, and not till then, will our beloved Commonwealth imitate the Divine Justice, which "desireth not the death of a sinner, but rather that he may turn from his wickedness and live."

Believe me, dear Sir, very faithfully yours,

CHARLES SUMNER.

TO THE CHAIRMAN OF THE COMMITTEE.

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THE DEMANDS OF FREEDOM:
REPEAL OF THE FUGITIVE SLAVE ACT.

SPEECH IN THE SENATE AGAINST MR. TOUCEY'S BILL, AND FOR THE REPEAL OF THE FUGITIVE SLAVE ACT, FEBRUARY 23, 1855.

ON the 23d of February, 1855, on motion of Mr. Toucey, of Connecticut, the Senate proceeded to the consideration of "a bill to protect officers and other persons acting under the authority of the United States," by which it was provided that "suits commenced or pending in any State Court against any officer of the United States, or other person, for or on account of any act done under any law of the United States, or under color thereof, or for or on account of any right, authority, claim, or title set up by such officer or other person, under any law of the United States," should be removed for trial to the Circuit Court of the United States. It was seen at once that under these words an attempt was made to oust the State Courts of cases arising from trespasses and damages under the Fugitive Slave Act; and the bill was pressed, as everything for Slavery was always pressed, even on Friday, to the exclusion of the private claims to which that day was devoted under the rules of the Senate. A debate commenced, which was continued with much animation and feeling late into the night.

Mr. Sumner seized this opportunity to urge again his proposition to repeal the Fugitive Slave Act. Just before the final question, he took the floor and spoke as follows.

MR. PRESIDENT, — On a former occasion, as Slavery was about to clutch one of its triumphs, I rose to make my final opposition at midnight. It is now the same hour. Slavery is pressing again for its accustomed victory, which I undertake again for the moment to arrest. It is hardly an accidental conjunction which constantly brings Slavery and midnight together.

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Since eleven o'clock this forenoon we have been in our seats, detained by the dominant majority, which, in subservience to Slavery, refuses to postpone this question or to adjourn. All other things are neglected. Various public interests, at this late stage of the session, demanding attention, are put aside. According to usage of the Senate, Friday is devoted to private claims. I am accustomed to call it our day of *justice*, — glad, that, since these matters are referred to us, at least one day in the week is thus set apart. But Slavery grasps this whole day, and changes it to a day of *injustice*. By the calendar, which I hold in my hand, it appears that upwards of seventy-five private bills, with which are associated hopes and fears of widows and orphans, and of all who come to Congress for relief, are on your table, — neglected, ay, Sir, sacrificed, to the bill now urged with so much pertinacity. Like Juggernaut, the bill is driven over prostrate victims. And here is another sacrifice to Slavery.

I do not adequately expose this bill, when I say it is a sacrifice to Slavery. It is a sacrifice to Slavery in its most odious form. Bad as Slavery is, it is not so bad as hunting slaves. There is seeming apology for Slavery at home, in States where it prevails, founded on difficulties in the position of the master and the relations of personal attachment it sometimes excites; but every apology fails, when you seek again to enslave the fugitive whom the master cannot detain by duress or kindness, and who, by courage and intelligence, under guidance of the North Star, can achieve a happy freedom. Sir, there is wide difference between Slaveholder and Slave-Hunter.

But the bill before you is to aid in the chase of slaves.

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This is its object. This is its "being's end and aim." And this bill, with this object, is pressed upon the Senate by the honorable Senator from Connecticut [Mr. TOUCEY]. Not from slave soil, but from free soil, comes this effort. A Senator from the North, a Senator from New England, lends himself to the work, and with unnatural zeal helps to bind still stronger the fetter of the slave.

MR. RUSK (of Texas) [*interrupting*]. Will the honorable Senator allow me to interrupt him?

MR. SUMNER. Certainly.

MR. RUSK. I ask him to point out the words in this bill where Slavery is mentioned.

MR. SUMNER. I am glad the Senator from Texas asks the question, for it brings attention at once to the true character of this bill. I know its language well, and also its plausible title. On its face it purports to be "a bill to protect officers and other persons acting under the authority of the United States"; and it provides for the transfer of certain proceedings from State Courts to the Circuit Courts of the United States. And yet, Sir, by the admission of this whole debate, stretching from noon to midnight, it is a bill to bolster up the Fugitive Slave Act.

MR. RUSK. I have not listened to the debate, but I ask the Senator to point out in the bill the place where Slavery is mentioned. If the Constitution and laws appoint officers, and require them to discharge duties, will he abandon them to the mob?

MR. SUMNER. The Senator asks me to point out any place in this bill where "Slavery" is mentioned. Why, Sir, this is quite unnecessary. I might ask the Senator

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to point out any place in the Constitution of the United States where "Slavery" is mentioned, or where the word "slave" can be found, and he could not do it.

MR. RUSK. That is evading the question. I asked the Senator to point out in the bill the clause where Slavery is mentioned. The bill proposes to protect officers of the United States, whom you appoint, in discharging their duties. If they are to be left unprotected, repeal your law.

MR. SUMNER. I respond to the Senator with all my heart, "Repeal your law." Yes, Sir, repeal the Fugitive Act, which now requires the support of supplementary legislation. Remove this ground of offence. And before I sit down, I hope to make that very motion. Meanwhile I evade no question propounded by the honorable Senator; but I do not consider it necessary to show that "Slavery" is mentioned in the bill. It may not be found there in name; but Slavery is the very soul of the bill.

[MR. RUSK rose.]

MR. SUMNER. The Senator has interrupted me several times; he may do it more; but perhaps he had better let me go on.

MR. RUSK. I understand the Senator; but I make no boast of that sort.

MR. SUMNER. Very well. At last I am allowed to proceed. Of the bill in question I have little to say. Its technical character has been exposed by various Senators, and especially by my valued friend from Ohio [MR. CHASE] who opened this debate. Suffice it to say, that it is an intrusive and offensive encroachment on State Rights, calculated to subvert the power of States in

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the protection of the citizen. This consideration alone would be ample to secure its rejection, if the attachment to State Rights, so often avowed by Senators, were not utterly lost in stronger attachment to Slavery. But on these things, although well worthy of attention, I do not dwell. Objectionable as the bill may be on this ground, it becomes much more so when regarded as an effort to bolster up the Fugitive Slave Act.

Of this Act it is difficult to speak with moderation. Conceived in defiance of the Constitution, and in utter disregard of every sentiment of justice and humanity, it should be treated as an outlaw. It may have the form of legislation, but it lacks every essential element of law. I have so often exposed its character on this floor, that I shall be brief now.

There is an argument against it which has especial importance at this moment, when the Fugitive Act is made the occasion of new assault on State Rights. *This very Act is an assumption by Congress of power not delegated to it under the Constitution, and an infraction of rights secured to the States.* You will mark, if you please, the double aspect of this proposition, in asserting not only an assumption of power by Congress, but an infraction of State Rights. And this proposition, I venture to say, defies answer or cavil. Show me, Sir, if you can, the clause, sentence, or word in the Constitution which gives to Congress any power to legislate on this subject. I challenge honorable Senators to produce it. I fearlessly assert that it cannot be found. The obligations imposed by the "fugitive" clause, *whatever they may be,*[1] rest upon States, and not upon Congress.

[1] Here, as in other places, Mr. Sumner did not recognize that the language of the Constitution was applicable to "fugitive slaves."

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I do not now undertake to say what these obligations are, — but simply, that, whether much or little, they rest upon States. And this interpretation is sustained by the practice of Congress on another kindred question. The associate clause touching "privileges of citizens" is never made a source of power. It will be in the recollection of the Senate, that, during the last session, the Senator from Louisiana [Mr. BENJAMIN], in answer to a question from me, openly admitted that there were laws of the Southern States, bearing hard upon colored citizens of the North, which were unconstitutional; but when I pressed the honorable Senator with the question, whether he would introduce or sustain a bill to carry out the clause of the Constitution securing to these citizens their rights, he declined to answer.

MR. BENJAMIN. I think, Mr. President, I have a right to set the record straight upon that point. I rose in the Senate on the occasion referred to, as will be perfectly well recollected by every Senator present, and put a respectful question to the Senator from Massachusetts. Instead of a reply to my question, he put a question to me, which I answered, and then I put my question. Instead of replying to that, he again put a question to me. Considering that as an absolute evasion of the question which I put to him, I declined having anything further to say in the discussion.

MR. SUMNER. The Senator from Louisiana will pardon me, if I suggest that there is an incontrovertible fact which shows that the evasion was on his part. The record testifies not only that he did not reply, but that I was cut off from replying by efforts and votes of himself and his friends. Let him consult the "Congres-

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sional Globe," and he will find it all there.[1] I can conceive that it might be embarrassing for him to reply, since, had he declined to carry out the clause in question, it would be awkward, at least, to vindicate the Fugitive Slave Act, which is derived from an identical clause in the Constitution. And yet there are Senators on this floor, who, careless of the flagrant inconsistency, vindicate the exercise of power by Congress under the "fugitive" clause, while their own States at home deny any power of Congress under the associate clause, on the "privileges of citizens," assume to themselves complete right to determine the obligations of this clause, and then, in practical illustration of their assumption, ruthlessly sell into Slavery colored citizens of the North.

MR. BUTLER [*interrupting*]. Does the Senator allude to my State?

MR. RUSK. No, — to mine.

MR. BUTLER. If he means South Carolina, I will reply to him.

MR. SUMNER. I do allude to South Carolina, and also to other Southern States, — but especially to South Carolina. If I allude to these States, it is not to bring up and array the hardships of individual instances, but simply to show the position occupied by them on a constitutional question, identical with that in the Fugitive Act. And now, at the risk of repetition, if I can have your attention for a brief moment, without interruption, I will endeavor to state anew this argument.

The rules of interpretation, applicable to the clause of the Constitution securing to "the citizens of each State

[1] Congressional Globe, 33d Cong. 1st Sess., July 18, 1854, Vol. XXVIII. pp. 1790-91.

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all privileges and immunities of citizens in the several States," are equally applicable to its associate clause, forming part of the same section, in the same article, and providing that "persons held to service or labor in one State, under the laws thereof, escaping into another, shall be delivered up, on claim of the party to whom such service or labor may be due." Of this there can be no doubt.

If one of these clauses is regarded as a compact between the States, to be carried out by them respectively, according to their interpretation of its obligations, without intervention of Congress, then the other must be so regarded; nor can any legislative power be asserted of Congress under one clause which is denied under the other. This proposition cannot be questioned. Now mark the consequences.

Congress, in abstaining from all exercise of power under the first clause, when required to protect the liberty of colored citizens, while assuming power under the second clause, in order to obtain the surrender of fugitive slaves, shows an inconsistency, which becomes more monstrous when it is considered that in the one case the general and commanding interests of Liberty are neglected, while in the other the peculiar and subordinate interests of Slavery are carefully assured; and such an exercise of power is an alarming evidence of that influence of Slavery in the National Government which has increased, is increasing, and ought to be overthrown.

Looking more precisely at these two clauses, we arrive at the true conclusion. According to express words of the Constitution, in the Tenth Amendment, "the powers not delegated to the United States by the Constitu-

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tion, nor prohibited by it to the States, are reserved to the States respectively, or to the people"; and since no powers are delegated to the United States in the clause relating to "privileges and immunities of citizens," or in the associate clause of the same section, relating to the surrender of "persons held to service or labor," therefore all legislation by Congress, under either clause, must be an assumption of undelegated powers, and an infraction of rights secured to the States respectively, or to the people: and such, I have already said, is the Fugitive Slave Act.

I might go further, and, by the example of South Carolina, vindicate to Massachusetts, and every other State, the right to put such interpretation upon the "fugitive" clause as it shall think proper. The Legislature of South Carolina, in a series of resolutions adopted in 1844, asserts the following proposition: —

"*Resolved*, That free negroes and persons of color are not citizens of the United States *within the meaning of the Constitution*, which confers upon the citizens of one State the privileges and immunities of citizens in the several States."[1]

Here is a distinct assumption of right to determine the *persons* to whom certain words of the Constitution are applicable. Now nothing can be clearer than this: If South Carolina may determine for itself whether the clause relating to the "privileges and immunities of citizens" be applicable to *colored citizens* of the several States, and may solemnly deny its applicability, then may Massachusetts, and every other State, determine for itself whether the other clause, relating to the surrender

[1] Reports and Resolutions of the General Assembly of South Carolina, Sess. 1844, December 5, p 160.

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of "persons held to service or labor," be really applicable to *fugitive slaves*, and may solemnly deny its applicability.

Mr. President, I have said enough to show the usurpation by Congress under the "fugitive" clause of the Constitution, and to warn you against abetting this usurpation. But I have left untouched those other outrages, many and great, which enter into the existing Fugitive Slave Act, among which are the denial of trial by jury, the denial of the writ of *Habeas Corpus*, the authorization of judgment on *ex parte* evidence without the safeguard of cross-examination, and the surrender of the great question of Human Freedom to be determined by a mere Commissioner, who, according to the requirement of the Constitution, is grossly incompetent to any such service. I have also left untouched the hateful character of this enactment, as a barefaced subversion of every principle of humanity and justice. And now, Sir, we are asked to lend ourselves anew to this enormity, worthy only of indignant condemnation; we are asked to impart new life to this pretended law, this false Act of Congress, this counterfeit enactment, this monstrosity of legislation, which draws no life from the Constitution, as it clearly draws no life from that Supreme Law which is the essential fountain of life to every human law.

Sir, the bill before you may have the approval of Congress; and in yet other ways you may seek to sustain the Fugitive Slave Act. But it will be in vain. You undertake what no legislation can accomplish. Courts may come forward, and lend it their sanction. All this, too, will be in vain. I respect the learning of judges; I reverence the virtue, more than learning, by

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which their lives are often adorned. Nor learning, nor virtue, when, with mistaken force, bent to this purpose, can avail. I assert confidently, Sir, and ask the Senate to note my assertion, that there is no court, howsoever endowed with judicial qualities or surrounded by public confidence, which is strong enough to lift this Act into permanent consideration or respect. It may seem for a moment to accomplish the feat. Its decision may be enforced, amidst tears and agonies. A fellow-man may be reduced anew to slavery. But all will be in vain. This Act cannot be upheld. Anything so entirely vile, so absolutely atrocious, would drag an angel down. Sir, it must drag down every court or judge venturing to sustain it.

And yet, Sir, in zeal for this enormity, Senators announce their purpose to break down the recent legislation of States, calculated to shield the liberty of the citizen. "It is difficult," says Burke, "to frame an indictment against a whole people." But here in the Senate, where are convened the jealous representatives of the States, we hear whole States arraigned, as if already guilty of crime. The Senator from Louisiana [Mr. BENJAMIN], in plaintive tones sets forth the ground of proceeding, and more than one State is summoned to judgment. It would be easy to show, by critical inquiry, that this whole charge is without just foundation, and that all the legislation so much condemned is as clearly defensible under the Constitution as it is meritorious in purpose.

Sir, the only crime of these States is, that Liberty is placed before Slavery. Follow the charge, point by point, and this is apparent. In securing to every person claimed as slave the protection of trial by jury and the *Habeas*

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Corpus, they simply provide safeguards strictly within the province of every State, and rendered necessary by the usurpation of the Fugitive Act. In securing the aid of counsel to every person claimed as slave, they but perform a kindly duty, which no phrase or word in the Constitution can be tortured to condemn. In visiting with severe penalties every malicious effort to reduce a fellow-man to slavery, they respond to the best feelings of the human heart. In prohibiting the use of county jails and buildings as barracoons and slave-pens, — in prohibiting all public officers, holding the commission of the State, in any capacity, whether as Chief Justice or Justice of the Peace, whether as Governor or Constable, from any service as slave-hunter, — in prohibiting the *volunteer militia* of the State, in its organized form, from any such service, the States simply exercise a power under the Constitution, recognized by the Supreme Court of the United States even while upholding Slavery in the fatal *Prigg* case, by POSITIVE PROHIBITION, to withdraw its own officers from this offensive business.

For myself, let me say that I look with no pleasure on any possibility of conflict between the two jurisdictions of State and Nation; but I trust, that, if the interests of Freedom so require, the States will not hesitate. From the beginning of this controversy, I have sought, as I still seek, to awaken another influence, which, without the possibility of conflict, will be mightier than any Act of Congress or the sword of the National Government: I mean an enlightened, generous, humane, Christian public opinion, which shall blast with contempt, indignation, and abhorrence all who, in whatever form or under whatever name, undertake to be agents in

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enslaving a fellow-man. Sir, such an opinion you cannot bind or subdue. Against its subtile, pervasive influence your legislation and the decrees of courts will be powerless. Already in Massachusetts, I am proud to believe, it begins to prevail; and the Fugitive Act there will soon be a dead letter.

Mr. President, since things are so, it were well to remove this Act from our statute-book, that it may no longer exist as an occasion of ill-will and a point of conflict. Let the North be relieved from this usurpation, and the first step will be taken towards permanent harmony. The Senator from Louisiana [Mr. BENJAMIN] has proclaimed anew to-night, what he has before declared on this floor, "that Slavery is a subject with which the Federal Government has nothing to do." I thank him for teaching the Senate that word. True, most true, Sir, ours is a Government of Freedom, having nothing to do with Slavery. This is the doctrine which I have ever maintained, and am happy to find recognized in form, if not in reality, by the Senator from Louisiana. The Senator then proceeded to declare that "all that the South asks is to be let alone." This request is moderate. And I say, for the North, that all we ask is to be let alone. Yes, Sir, let us alone. Do not involve us in the support of Slavery. Hug the viper to your bosoms, if you perversely will, within your own States, until it stings you to a generous remorse, but do not compel us to hug it too; for this, I assure you, we can never do.

The Senator from Louisiana, with these professions on his lips, proceeds to ask, doubtless with complete sincerity, but in strange forgetfulness of our country's history: "Did we ever bring this subject into Con-

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gress?" Yes, Sir, that was his inquiry, — as if there was any moment, from the earliest days of the Republic, when the supporters of Slavery ceased to bring this subject into Congress. Almost from the beginning it has been here, through the exercise of *usurped power*, nowhere given under the Constitution: for I am glad to believe that the Constitution of my country contains no words out of which Slavery, or the power to support Slavery, can be derived; and this conclusion, I doubt not, will yet be affirmed by the courts. And yet the honorable Senator asks, "Did we ever bring this subject into Congress?" The answer shall be plain and explicit. Sir, you brought Slavery into Congress, when, shortly after the adoption of the Constitution, you sanctioned it in the District of Columbia, within the national jurisdiction, and adopted that barbarous slave code, still extant on your statute-book, which the Senator from Connecticut [Mr. GILLETTE] so eloquently exposed to-night. You brought Slavery into Congress, when, at the same period, you accepted the cession of territories from North Carolina and Georgia, now constituting States of the Union, with conditions in favor of Slavery, and thus began to sanction Slavery in territories within the exclusive jurisdiction of Congress. You brought Slavery into Congress, when, at different times, you usurped a power, not given by the Constitution, over fugitive slaves, and by most offensive legislation thrust your arms into distant Northern homes. You brought Slavery into Congress, when, by express legislation, you regulated the coastwise slave-trade, and thus threw the national shield over a traffic on the coast of the United States which on the coast of Congo you justly brand as "piracy." You brought Slavery into

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Congress, when, from time to time, you sought to introduce new States with slaveholding Constitutions into the National Union. And, permit me to say, Sir, you brought Slavery into Congress, when you called upon us, as you have done even at this very session, to pay for slaves, and thus, in defiance of a cardinal principle of the Constitution, pressed the National Government to recognize property in man. And yet the Senator from Louisiana, with strange simplicity, says that the South only asks to be let alone. Sir, the honorable Senator borrows the language of the North, which, at each of these usurpations, exclaims, "Let us alone!" And let me say, frankly, that peace can never prevail until you do let us alone, — until this subject of Slavery is banished from Congress by the triumph of Freedom, — until Slavery is driven from its usurped foothold, and Freedom is made *national* instead of *sectional*, — and until the National Government is brought back to the precise position it occupied on the day that Washington took his first oath as President of the United States, when there was no Fugitive Act, and the national flag, as it floated over the national territory within the jurisdiction of Congress, nowhere covered a single slave.

And now, Sir, as an effort in the true direction of the Constitution, in the hope of beginning the divorce of the National Government from Slavery, and to remove all occasion for the proposed measure under consideration, I shall close these remarks with a motion to repeal the Fugitive Act. Twice already, since I have had the honor of a seat in this chamber, I have pressed that question to a vote, and I mean to press it again to-night. After the protracted discussion in-

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volving the character of this enactment, such a motion belongs logically to this occasion, and fitly closes its proceedings.

At a former session, on introducing this proposition, I discussed it at length, in an argument which I fearlessly assert never has been answered, and now, in this debate, I have already touched upon various objections. There are yet other things which might be urged. I might exhibit abuses which have occurred under the Fugitive Act, — the number of free persons it has doomed to Slavery, the riots it has provoked, the brutal conduct of its officers, the distress it has scattered, the derangement of business it has caused, — interfering even with the administration of justice, changing courthouses into barracks and barracoons, and filling streets with armed men, amidst which law is silent. All these things I might expose. But in these hurried moments I forbear. Suffice it to say, that the proposition to repeal the existing Fugitive Act stands on fundamental principles which no debate or opposition can shake.

There are considerations belonging to the present period which give new strength to this proposition. Public Opinion, which, under a popular government, makes and unmakes laws, and which for a time was passive and acquiescent, now lifts itself everywhere in the States where the Act is sought to be enforced, and demands a change. Already three States, Rhode Island, Connecticut, and Michigan, by formal resolutions presented to the Senate, have concurred in this demand. Tribunals of law are joining at last with the people. The Superior Court of Cincinnati has denied the power of Congress over this subject. And now, almost while I speak, comes the solemn judgment of the Supreme

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Court of Wisconsin, delivered after elaborate argument, on successive occasions, before a single judge, and then before the whole bench, declaring this Act a violation of the Constitution. In response to public opinion, broad and general, if not universal, at the North, swelling alike from village and city, from seaboard and lake, — judicially attested, legislatively declared, and represented also by numerous petitions from good men without distinction of party, — in response to this Public Opinion, as well as in obedience to my own fixed convictions, I deem it my duty not to lose this opportunity of pressing the repeal of the Fugitive Slave Act once more upon the Senate. I move, Sir, to strike out all after the enacting clause in the pending bill, and insert instead these words: —

"That the Act of Congress, approved September 18, 1850, usually known as the 'Fugitive Slave Act,' be, and the same is hereby, repealed."

And on this motion I ask the yeas and nays.

On taking his seat, Mr. Sumner was followed by Mr. Butler, of South Carolina, when the following passage occurred.

MR. BUTLER. Mr. President, I have no idea of irritating sectional differences. If gentlemen have the opinions which it seems the gentleman from Massachusetts entertains, be it so. I assure him I do not intend to bandy words with him. He talks as if he was disposed to maintain the Constitution of the United States; but if I were to put to him a question now, I would ask him one which he, perhaps, would not answer me honestly.

MR. SUMNER. I will answer any question.

MR. BUTLER. Then I ask you honestly now, whether, all laws of Congress being put out of the question, you would

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recommend to Massachusetts to pass a law to deliver up fugitives from slavery?

MR. SUMNER. The Senator asks me a question, and I answer, frankly, that no temptation, no inducement, would draw me in any way to sanction the return of any man to slavery. Others will speak for themselves. In this respect I speak for myself.

MR. BUTLER. I do not rise now at all to question the right of the gentleman from Massachusetts to hold his seat, under the obligation of the Constitution of the United States, with the opinions which he has expressed; but, if I understand him, he means, that, whether this law or that law or any other law prevails, he disregards the obligations of the Constitution of the United States.

MR. SUMNER. Not at all. That I never said. I recognize the obligations of the Constitution.

MR. BUTLER. He says he recognizes the obligations of the Constitution of the United States. I see, I know he is not a tactician, and I shall not take advantage of the infirmity of a man who does not know half his time exactly what he is about. [*Laughter.*] But, Sir, I will ask that gentleman one question: If it devolved upon him as a representative of Massachusetts, all Federal laws being put out of the way, would he recommend any law for the delivery of a fugitive slave under the Constitution of the United States?

MR. SUMNER. Never.

MR. BUTLER. I knew that. Now, Sir, I have got exactly what is the truth, and what I intend shall go forth to the Southern States. . . . . When the gentleman talks in the way he does, I choose to rebuke him. Any man who comes up here with a philanthropy inconsistent with what is practical justice and liberty, I do not say that I scorn him, — I use no such word, — but by heavens[1] . . . .

[1] Congressional Globe, 33d Cong. 2d Sess., Appendix, Vol. XXXI. p. 246. The tone of Senator Butler on this occasion shows the intolerable spirit of Slavery, which would not endure Mr. Sumner.

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The question, being taken by yeas and nays on the amendment offered by Mr. Sumner, resulted, — yeas 9, nays 30, — as follows.

YEAS. — Messrs. Brainerd, Chase, Cooper, Fessenden, Gillette, Seward, Sumner, Wade, and Wilson, — 9.

NAYS. — Messrs. Adams, Badger, Bayard, Bell, Benjamin, Bright, Brown, Butler, Clay, Dawson, Douglas, Fitzpatrick, Geyer, Gwin, Hunter, Jones, of Iowa, Jones, of Tennessee, Mallory, Mason, Morton, Pearce, Pettit, Rusk, Sebastian, Shields, Slidell, Thomson, of New Jersey, Toucey, Weller, and Wright, — 30.

So the amendment was rejected.

END OF VOLUME III.

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